REPORT OF THE
COMMITTEE
APPOINTED BY THE
UNITED PROVINCES LEGISLATIVE COUNCIL
TO CO-OPERATE WITH THE
INDIAN STATUTORY COMMISSION

ALLAHABAD:
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Personnel of the Committee.

(1) Mr. J. P. SRIVASTAVA, M.SC., A.M.S.T., M.L.C. (representative of the Upper India Chamber of Commerce)—*Chairman*.

(2) The Hon'ble Raja Bahadur KUSHALPAL SINGH, M.A., LL.B., M.L.C. (Non-Muhammadan Rural, Agra district), Minister for Education and Industries, United Provinces.

(3) Khan Bahadur HAFIZ HIDAYAT HUSAIN, B.A., Bar.-at-Law, M.L.C. (Muhammadan Rural, Etawah, Cawnpore and Fatehpur districts).

(4) Dr. SHAFA'AT AHMAD KHAN, M.A., LITT. D. (Dublin), M.L.C. (Muhammadan Rural, Moradabad North).

(5) Rai Bahadur Kunwar BISHESHWAR DAYAL SETH, B.SC., F.C.S., M.L.C. (representative of the British Indian Association of the Taluqdars of Oudh).

(6) Mr. H. C. DESANGES, Bar.-at-Law, M.L.C. (Government nominee to represent the Anglo-Indian Community).

7) Babu RAMA CHARANA, B.A., LL.B., M.L.C. (Government nominee to represent the Depressed Classes).

Mr. H. K. MATHUR, B.A., LL.B., U.P.C.S., *Secretary*.

NOTE.

The total expenditure incurred by the Committee was approximately Rs. 19,000.

CONTENTS

Introductory

PART I

REVIEW OF THE WORKING OF THE REFORMED CONSTITUTION IN THE UNITED PROVINCES

THE PROVINCIAL LEGISLATIVE COUNCIL.

WORKING OF SOME OF THE RESERVED DEPARTMENTS.

WORKING OF SOME OF THE TRANSFERRED DEPARTMENTS.

THE LOCAL SELF-GOVERNING BODIES.

PART II

GENERAL OBSERVATIONS ON FUTURE ADVANCE

OBJECTIONS TO THE GRANT OF FULL PROVINCIAL AUTONOMY.

PART III

RECOMMENDATIONS.

REPORT

To the Right Honourable Sir JOHN SIMON, P.C., K.C.V.O., K.C., M.P., Chairman, Indian Statutory Commission.

Sir,

We have the honour to submit, for the consideration of the Indian Statutory Commission and the Indian Central Committee, our report on the working of the Reformed Constitution and suggestions for the future Constitution of these provinces.

2. In pursuance of your desire expressed in your letter to His Excellency the Viceroy, dated February 6, 1928, for the constitution of committees of the Indian and the Provincial Legislatures to confer with the Indian Statutory Commission in "Joint Free Conference", the United Provinces Legislative Council at its meeting held on September 18, 1928, passed the following resolution on the motion of the Hon'ble the Finance Member :— **Election and Personnel of the Committee.**

> "That the Legislative Council do elect during its present session, on such date as may be fixed by the Hon'ble the President, a Committee consisting of seven non-official members to take part in the Joint Conference of the Indian Statutory Commission."

We consider it necessary to mention that before the resolution was moved the leaders of the Nationalist and

the Swaraj Parties in the Council made statements protesting against the procedure adopted by the Government in regard to the said motion after the Council had passed a resolution in its February session expressing its desire not to co-operate with the Indian Statutory Commission, and that after making these statements, the members of the said parties withdrew from the Chamber and took no part in the election of the Committee. In pursuance of the said resolution we were elected on September 20, 1928. A reference to the personnel of our Committee will show that broadly speaking it is composed of four Hindus, two Musalmans, and one Anglo-Indian. Of the four Hindus, the Chairman, Mr. J. P. Srivastava is a representative of the Upper India Chamber of Commerce; Kunwar Bisheshwar Dayal Seth is a representative of the British Indian Association (a body which contains within its fold all the Taluqdars of Oudh); the Hon'ble Raja Bahadur Kushalpal Singh is a representative of an important rural constituency, who, moreover, soon after his election to the Committee was appointed a Minister and still holds that office, and Babu Rama Charana is a nominated member representing in the Council the Depressed Classes. The two Musalmans are Khan Bahadur Hafiz Hidayat Husain and Dr. Shafa'at Ahmad Khan. Both are prominent representatives of their community in the local Council. Mr. Desanges is Government nominee to represent in the Council the Anglo-Indian community. It is a matter for some regret that as a result of the unfortunate decision of the Nationalist and Swaraj Parties to have nothing to do with the Statutory Commission, a section of the Council was unrepresented on the Committee, but as will appear from the description of the personnel just given, the Committee was as representative as was possible in the circumstances of the case. In all our deliberations we have not been unconscious of the fact

that we have not had the benefit of the broad field of opinion of the section to which we have just referred.

Terms of reference.

3. We were given no specific terms of reference, but in view of your well-known letters to His Excellency the Viceroy, dated February 6, and March 28, 1928, we assume that we are to be guided by the provisions *mutatis mutandis* of section 84A of the Government of India Act, 1919, with the restriction that we have to confine ourselves mainly to the problems as appertaining to the United Provinces of Agra and Oudh. Section 84A of the Government of India Act says that the Commission shall be appointed "for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the Commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local Legislatures is or is not desirable."

We have kept in view the important test laid down by the Parliament in the Government of India Act, 1919, regarding the Parliament further divesting itself of its responsibility for the good governance of India, namely, "the measure of co-operation received from those on whom new opportunities for service were conferred and the extent to which it has been found that confidence can be reposed in their sense of responsibility." Accordingly we have confined our inquiry to the working of the existing Constitution in its important aspects in these provinces, and our proposals relating to the form of Government that in our opinion should be established

in these provinces are based on the conclusions which we have been able to draw from this inquiry.

1

Meetings of the Committee.

4. The Committee first met on October 28, 1928, and unanimously elected Mr. J. P. Srivastava as its Chairman. We have had twenty-four meetings of the Committee to discuss procedure, proposals and the present Report. Besides, we sat for eight days in Joint Free Conference with the Commission and the Central Committee at Lucknow from November 30 to December 11, 1928, to hear the evidence tendered in these provinces. Lastly, we had three meetings with the other Provincial Committees and three with the Commission at Delhi from March 30 to April 4, 1929. We have, thus, had in all thirty-eight sittings.

Material examined.

5. We had the privilege of listening to all the evidence tendered in these provinces, whether publicly or in *camera*, and we were furnished with copies of all the memoranda submitted to the Commission from these provinces and by bodies of an All-India importance. We were also furnished, at our request, with certain records of evidence tendered at Delhi and Calcutta. A list of the witnesses who came before us and of the memoranda and records of evidence that were supplied to us is appended to this report (Appendix A). Besides these, we carefully followed all the press reports of evidence tendered elsewhere in the country, of which we had collections made for our convenience. In enumerating the material that we have considered we should also mention the report of the All-Parties Committee commonly called the "Nehru Report", the Report of the Donoughmore Commission on the Ceylon Constitution and the various reports connected with the 1919 and the 1924 Reforms Inquiries.

Acknowledgments.

6. We would like to place on record our appreciation of the services rendered by Mr. H. K. Mathur, the indefatigable Secretary of our Committee for the

grudging and efficient manner in which he has discharged his duties. Further we have pleasure in acknowledging our indebtedness to Mr. T. Sloan, I.C.S., Officer on Special Duty in connection with the Indian Statutory Commission, for the uniform courtesy he has extended to us and for the promptness with which he has supplied us with whatever material we required for our use.

PART I.

REVIEW OF THE WORKING OF THE REFORMED CONSTITUTION IN THE UNITED PROVINCES

General atmosphere.

7. The Reformed Constitution was introduced in the year 1921 and in order that the results of the great constitutional experiment may be correctly estimated, it is necessary to describe briefly the atmosphere prevailing at and since its introduction. The new Constitution started at a time when the Non-co-operation movement was daily gaining strength. Under the powerful leadership of Mr. Gandhi, the movement aimed at wrecking the new system of Government. The followers of that movement refrained from entering the new Legislative Council, but outside the Council they used every effort to bring the machinery of the administration to a standstill. In spite of this attitude of a by-no-means unimportant section of the people, the moderate elements decided to enter the Legislative Council and to work the new Constitution as best as they could. In the words of the United Provinces Government, "much credit is due to those who determined to assist the Government under such difficult conditions, because if they, too, had joined the popular movement the Reforms had been doomed from the outset." The Non-co-operation movement was coupled with the *Khilafat* movement under the influence of which a section of the Muhammadans also openly

joined the ranks of those who wanted to smash the Constitution. It is, however, gratifying to note that there were even at that time responsible people who realized the real menace of the situation and, in the teeth of popular opposition, worked the Constitution with no small measure of success and thus enabled it to survive. By 1923 the clouds which had hung on the political firmament of the country began to disperse. The Non-co-operation and the *Khilàfat* movements had begun to wane and the Muddiman Inquiry Committee, appointed in the year 1924, reassured the people to an extent that they saw very clearly the futility of having nothing to do with the Constitution which in spite of its imperfections came to be looked upon as a substantial first step in the journey towards responsible government. The resultant split in the Congress was a pregnant sign of the changing atmosphere, and the Swarajists, who decided to enter the Council, had decidedly the better of their non-co-operating colleagues. As already stated, the institution in the year 1924 of an inquiry into the working of the Reforms created new hopes in the minds of the people, and every community began to think that its future lay in obtaining for itself such concessions and safeguards as would secure its position in the contemplated future government of the country. To add to this, the *Shuddhi* and the *Sangathan* movements on the one side and the *Tabligh* and *Tanzim* on the other came into being about the same time. As a result of the communal estrangement these movements had begun to cause, the Muhammadans began to speculate what their position with the Hindu majority was likely to be if Constitutional Reform was carried further along the road leading to responsible government. It must be admitted that the communal tension which made its appearance in the year 1924 has not yet disappeared, and, as stated by the United Provinces Government, the real significance of this communal feeling is political rather than religious. It is only

natural that every community should put forward its demands and state its fears and doubts when political advance is under discussion. It must, however, be stated that the saner elements of every community are not unmindful of the great harm which communal tension is doing to the country at large and there is no doubt that they would in time be prepared to sink their differences for the common good. Excepting for the communal virus, the working of the Reforms since 1924 has been fairly smooth in the province.

Ministers under the Reforms.

8. The Transferred half of the Government has been administered by Ministers who have, on the whole, given a good account of themselves. Messrs. Chintamani and Jagat Narain, who were the first Ministers, resigned in the year 1923, and Sir William Marris replaced them in the year 1923 by a Ministry composed of two landholders—a Hindu, Raja Parma Nand, and a Muhammadan, Nawab (now Sir) Muhammad Ahmad Sa'id Khan. Raja Parma Nand died in December, 1923, and his place was taken in the following month by Rai Rajeshwar Bali, a Hindu landlord from Oudh. Nawab Muhammad Ahmad Sa'id Khan and Rai Rajeshwar Bali remained together in office till January, 1926, when the former was appointed a member of the Executive Council in succession to Maharaja Sir Muhammad Ali Muhammad Khan of Mahmudabad on the completion of the latter's term of office. The Ministry had, therefore, to be reconstructed in 1926, and advantage was taken of the reconstruction to add to the number of the Ministers. The Ministry, as reconstructed, therefore, consisted of three Ministers, two of whom were Hindus and one a Muhammadan. The two new Ministers were both landlords: Thakur Rajendra Singh from Oudh and Nawab Muhammad Yusuf from Agra. These three Ministers together continued in office till June, 1928, when the two Hindu Ministers, Rai Rajeshwar Bali and

Thakur Rajendra Singh, resigned as a result of their decision not to co-operate with the inquiry of the Indian Statutory Commission. Their place was taken by Raja Jagannath Bakhsh Singh and Maharaj Kumar Major Mahijit Singh, both of whom were, again, landlords. Raja Jagannath Bakhsh Singh's appointment proved unpopular, and he had to resign as a result of a vote of no-confidence passed against him in September, 1928. He was succeeded by another landlord, Raja Bahadur Kushalpal Singh, who together with Maharaj Kumar Major Mahijit Singh and Nawab Muhammad Yusuf constitutes the present Ministry.

It will thus be seen that the history of the Ministry from the time of the introduction of the Reforms to the present day is not one of violent vicissitudes. On the contrary the Council, in spite of the opposition of a certain section of it, has been very considerate and indulgent with all the incumbents who have held office from time to time.

Reserved departments under the Reforms.

9. In regard to the Reserved half, the portfolio of the Home Department has been continuously held by non-official Indians since the introduction of the Reforms. The first incumbent of this office was Maharaja Sir Muhammad Ali Muhammad Khan whose term lasted from January, 1921 to January, 1926. He was succeeded by Nawab Sir Muhammad Ahmad Sa'id Khan who still holds that office. Sir Harcourt Butler, addressing the first meeting of the Reformed Legislative Council in January, 1921, stated that it was his desire that the two halves of the Government should work together, as far as possible, as one. He achieved a certain measure of success in this attempt although towards the end of his régime he found that in the special difficulties of the time— those were the days of the Non-co-operation movement at its height—the attempt to work the dyarchical

system as a unitary one proved a handicap to the Governor in Council whose primary duty was to maintain peace and prevent the outbreak of disorder, to attain which object he had to agree to the application of the Criminal Law Amendment Act to this province, a measure which proved extremely unpopular. Sir William Marris who succeeded Sir Harcourt Butler as Governor at the end of 1922 made no attempt to return to a unitary system. He held regular meetings of his Executive Council and he met his Ministers individually, but he did not hold meetings with them as a Ministry, though his rules of Executive business recognized that such meetings might be held. The existing provision in the Government's rules of Executive business gives the Governor the discretion to direct that a case shall be discussed at a meeting of the Council and Ministers sitting together, but in 1925 the Reforms Inquiry Committee made the recommendation that joint deliberations between the two sides of the Government on important questions should be definitely enjoined by rule. The members of the Executive Council and the Ministers agreed with this proposal, but Sir William Marris very strongly opposed it on what he called "practical grounds". Sir William Marris felt so strongly on this matter that he intimated to the Government of India that in so far as he had discretion he would refuse to make such a rule as was proposed, his main objection being that joint deliberation without common responsibility can lead neither to efficiency in the administration nor to harmonious relations between the two sides of the Government. Joint deliberation has, however, taken place under Sir William Marris, Sir Alexander Muddiman and Sir Malcolm Hailey as occasion demanded. What Sir William Marris insisted on was that the half of the Government responsible for the subject under discussion must subsequently come to a separate decision

for which it took full responsibility. There was to be no blurring of responsibility.

Services under the Reforms.

10. The introduction of the Reforms created a profound depression on the minds of the members of the All-India Services who were uncertain of the effects of the changes on their future prospects. It was not unnatural that for a time the Services lost heart, but since 1924 the feeling of depression has largely disappeared.

Financial stringency.

11. The working of the Reforms has also been seriously hampered by the financial stringency which has prevailed ever since their introduction. During the War, and for some time after its close, all schemes involving new expenditure which came in the train of the Reforms had been held up. The financial settlement gave an apparent advantage to the province by increasing its financial resources by nearly 1·6 crores, but this advantage very soon disappeared as a result of the substantial increases of pay which the Government had to give to all its servants owing to the rise in prices and also as a result of the additional expenditure which had to be incurred in order to work the more costly machinery of the Reforms. There was some falling off of the revenue from stamps and excise and the position became acute with a rising expenditure and a diminishing revenue. The axe of economy and retrenchment was freely applied, but in spite of this one deficit budget followed another. The contribution to the Government of India had become unbearable and it is only since its complete remission in the year 1927 that the financial outlook has comparatively improved. Even now the resources of the province are not capable of expansion. There are schemes of developments awaiting, but for lack of funds there seems no prospect of their being proceeded with in the near future. In judging the success or failure of the administration of the nation-building departments one

must not forget that progress without the necessary finance is impossible to achieve.

Inherent difficulties experienced in working dyarchy.

12. The defects of dyarchy are recognized on all hands and the system of Government which the provinces have so far had to make the most of is inherently unworkable in so many details that whatever success it has achieved during the last few years must necessarily be attributed to a spirit of goodwill and reasonableness in those who have had to work it. The question of relationship between the Governor and his Ministers is one which bristles with difficulties. There was never any intention that the Governor should occupy the position of a purely Constitutional Governor bound to accept the advice of his Ministers, but it is said to have been agreed from the very beginning that the Governor's powers of rejecting his Ministers' advice should be subject only to certain restrictions defined in an Instrument of Instructions. According to the Government of India Act "in regard to transferred subjects, the Governor has to be guided by the advice of his Ministers unless he sees sufficient reason to dissent from them, in which case he may require action to be taken otherwise than in accordance with their advice." This provision has to be read along with the Instrument of Instructions, "where the Governor is directed, when considering a Minister's advice, and deciding whether or not to dissent from it, to have due regard to his relations with the Legislative Council and to the wishes of the people as expressed by their representatives in the Council." It will be seen that the Governor has a wide freedom of action, but he is faced with a practical difficulty which might arise in case he decides to reject the advice of a Minister who has the support of a majority of the Legislature. Such a Minister will very likely resign when he finds that his advice has not been accepted by the Governor, who will be un-

able to find a substitute for him as the Legislature will not support a new man appointed in these circumstances. The only alternative open to the Governor will then be to dissolve the Council. It is not an uncommon complaint that the Ministers do not have sufficient freedom in their own departments, but with the powers of the Governor, as they stand in the existing Constitution, nothing else could be expected. The Reforms Inquiry Committee recommended that the powers of the Governor should be curtailed and that he should not dissent from his Ministers except—

(1) to prevent unfair discrimination among classes and interests;

(2) to protect minorities;

(3) to safeguard his own responsibility for Reserved subjects; and

(4) in regard to the interests of members of the permanent services.

The Governor in Council very strongly opposed this attempt to catalogue powers narrowly. It has been said that dyarchy could not have lived a day unless there was a good deal of mutual forbearance and a spirit of "give and take". The relations between the two parts of the Government have been very difficult of adjustment. Rules were made to regulate the disposal of (*a*) cases the decision in which lay with one department, but which affected the interests of both Reserved and Transferred departments; and (*b*) cases the actual jurisdiction of which was doubtful. These rules are described at page 27 of the United Provinces Government's Report on the Working of the System of Government (E. U. P.-216) and these may be said to regulate the domestic relations of members and Ministers. In spite of the existence of these definite rules regulating procedure, difficulties and differences of opinion have not been altogether absent.

The division of funds available for expenditure between the Reserved and the Transferred departments has been an occasional matter for disagreement, although in the end amicable agreement was reached in every case. Secretariat appointments in Transferred departments have given rise to some difficulty.

As distinguished from their domestic relations, the public relations of the two parts of the Government have also given rise to difficulties. The Joint Select Committee of Parliament was of opinion that generally members of the Executive Council and the Ministers should not oppose each other by speech or vote, but it was in favour of giving freedom to both members of the Executive Council and to Ministers not to support each other by speech or vote in respect of proposals of which either of them did not approve. In other words, they were to be left free to vote for each other's proposals when they were in agreement with them. During the discussion of the District Boards Bill in the Council on November 6, 1922, the Minister in charge was opposed to a certain amendment, in which matter the two members of the Executive Council and all, except one, of the official members voted against the Ministers. On another amendment also both members of the Executive Council and several other officials went into the lobby against the Ministers. Ministers have never actually voted against the Reserved side of the Government, although in more than one case they have abstained from voting, as they did not approve of the policy. During the discussion on the Oudh Rent Bill and on certain motions on the Police Budget, as also on resolutions which determined that the site of the new Council Chamber should be in Lucknow and on that recommending the establishment of a Chief Court for Oudh, the first Ministers refrained from voting. The most recent instance of abstention is that of the two

Hindu Ministers on the resolution moved in February, 1928, urging boycott of the Indian Statutory Commission. The action of the Ministers in remaining neutral resulted in the defeat of Government by one vote—they justified the course they adopted on the ground that opinion in the Council was so sharply divided that they considered it best not to go into the lobby with one party or the other.

Absence of joint responsibility in the Ministry.

13. No attempt has been made in this province, excepting by the first Ministry and to a limited extent, very recently, by the Ministers to act in concert under some kind of a joint responsibility. The Joint Select Committee thought that Ministers would wish to act together and that it was better that they should do so. It is doubtful whether the Government of India Act recognizes this fact or not, as sub-section (3) of section 52 of the Act which relates to this matter, is vaguely worded. The United Provinces Government has stated in its Report on the Working of the Reforms that to obtain a suitable Ministry composed of Ministers who would act together would be a matter of very considerable difficulty, so long as no single party has a clear majority in the Legislature, and so long as communal feeling is as acute as it has been recently. The Reforms Inquiry Committee were clear in their recommendation on the subject. They thought that the Instrument of Instructions should be amended with the object of providing that the administration on the Transferred side should be conducted by a jointly responsible Ministry. The Governor in Council of this province, as constituted in July, 1925, made no objection to this proposal, but no step seems to have been taken to translate the recommendation into practice until September, 1928, when on the resignation of Raja Jagannath Bakhsh Singh, Raja Bahadur Kushalpal Singh was appointed on the understanding that he and his two colleagues would observe

joint responsibility, although of a limited kind. The present Ministry is pledged to stand or fall together; in other words, the joint responsibility extends only to motions of no-confidence which may be brought against any member of the Ministry. The fact that even the Transferred half of the Local Government has not been able to work collectively, is in itself a serious condemnation of the existing system of Government. Without acting jointly the Ministers cannot present a solid front to the parties in opposition and this strikes at the root of the development of responsible government on party lines. The Reforms Inquiry Committee rightly stressed this point, and at least one important reason why the proper system has not developed is that the Ministers have been artificially supported by the official *bloc* in the Council.

Dyarchy—an impossible system.

14. Examined a little closely, a dyarchical system of government would appear to be a contradiction in terms. So far as the Reserved side of the Government is concerned, the Executive consists of the Governor in Council primarily responsible to Parliament, but in practice generally dependent on the goodwill of a Legislature which is apt to be hostile and irresponsible on account of the fact that it is precluded from exercising control over that side of Government. On the Transferred side, there is a Governor acting with Ministers, theoretically responsible to the Legislature, but in so far that they do not command a majority, in practice generally dependent on the support of the official *bloc*. It has been the experience of Government that support was less readily accorded to measures promoted by the Reserved side, and frequently the Governor in Council has found himself in a minority in his own Legislature. It is not a very easy matter for the Governor in Council to override even in the Reserved field the view taken by his Legislature.

and this has frequently imperilled the administration. The Governor is naturally reluctant to make use of his emergency powers and consequently has to give way in lesser matters in order to gain his way on essential matters. In respect of the Transferred departments the influence of the Legislature has been a still greater source of weakness to the Governor in Council. As the United Provinces Government has stated, "the larger the amount of the support on which the Ministers can rely in the Legislature, the weaker may be the position of the Governor in Council in relation to the Legislature" and "the solidarity of the Government is threatened by any measure on the Reserved side which is likely to raise determined opposition in the Legislature, and to preserve the Government as a whole the Governor in Council is forced to go to the utmost limit of concession." This thought-provoking statement by the United Provinces Government calls for special mention. There is no doubt that the stronger the support of the Ministers in the Legislature, the more embarrassing their position is liable to become if they were to support the Reserved half contrary to the wishes of the Council. As the United Provinces Government puts it, this shows up "a serious inherent defect of the dyarchical system, namely, the weakening of the Governor in Council by the pressure of the Legislature on the Ministers and the weakening of the Ministers *vis-à-vis* the Legislature by reason of their connection with the Governor in Council." Another weakness of the Governor in Council results from the fact that subjects have to be classified into Transferred and Reserved. An illustration of this which might be mentioned here is that buildings for the Reserved departments are included in the budget of the Public Works Department which is a Transferred subject. If the Legislature refuses supply, the Governor in Council is

helpless, since it is only in cases of emergency that the Governor is authorized to certify expenditure for Transferred departments and even then he can certify only such expenditure as may be necessary for the safety and tranquillity of the province or for the carrying on of the department. By this means the Legislature is in a position to hold up the work of a Reserved department which would prevent the Governor from fulfilling his responsibility for that department.

Interference from higher authorities.

15. There have been cases in which interference from above has caused great embarrassment. In 1921 the Government of India and the Secretary of State attempted to exercise supervision in respect of the Oudh Rent Bill which would have caused considerable complications if, on the representation of Sir Harcourt Butler, the higher authorities had not decided not to pursue their intentions. There was no question of the legal right of these authorities to give directions, but the United Provinces Government, as constituted at the time, felt that in the particular case the right was exercised in a manner which showed a lack of appreciation of the local position and of the effects of the Reforms on its affirmative power of legislation. Another instance of the Government of India's interference related to the introduction within a specified time of certain reforms in Jail administration, which involved heavy expenditure. The Provincial Legislature would not have voted this expenditure and the Governor, at the time, was not prepared to certify it. The Government of India, however, subsequently withdrew their time-limit for the introduction of these reforms. A difficulty of another kind, which was felt at the outset but has since disappeared, affected the services. There were certain members of the services who had not been appointed by the Secretary of State in Council and consequently their salaries were

not protected from the vote of the Legislature, and in certain cases where the pay was protected, allowances remained subject to the vote. In such cases a clash between the Legislature and the orders of the Secretary of State was not unlikely. These difficulties were, however, removed by the passage of the Government of India Civil Services Act of 1925. So far as the Transferred side of the Government is concerned, the United Provinces Government has stated that it has no general complaint in regard to the manner in which either the Government of India or the Secretary of State has exercised his powers under Devolution Rule 49. While, however, there has been no ground for general criticism, instances of conflict have not been entirely absent. In 1921 the Government of India tried to force on the Local Government certain provisions in respect of the Allahabad University Bill which were acceptable neither to the Ministers nor to the Legislature. In the matter of services the relationship between the Transferred side of this Government and the higher authorities has from time to time given rise to a number of difficulties. In one case the Government of India formulated precepts for the provincial Public Works Department and subordinate services regardless of the fact that these were Transferred matters. In the case of an officer of an All-India Service who had been temporarily re-employed by this Government after his retirement, the Secretary of State sanctioned the grant to him of a passage to England despite the fact that the Local Government had already refused to grant the passage. The item was votable and the Legislative Council rejected the demand when it was put before it. Another instance of interference by the Secretary of State for India was when a Minister desired to reduce the number of administrative posts filled by members of an All-India Service operating in a department under him. Another Minister anxious to

increase the Provincial Medical Service has found his hands tied by orders of higher authority in regard to the number of posts that must be reserved for officers of the Indian Medical Service. The United Provinces Government remarks that there appears to be no way out of such difficulties so long as the existing constitutional position is maintained and goes on to say that it is clearly impossible for the Secretary of State and the Government of India to surrender their control without which the position of members of the All-India Services operating in the Transferred field would be extremely precarious. Here is obviously a flaw in the Constitution which has to be made good. It sounds anomalous on the face of it that Ministers have not complete control over the All-India Services administering Transferred departments and this fact has placed them on more than one occasion in a position of difficulty with the Legislative Council.

The circumstances which led to the resignation of the two Hindu Ministers last June are not without an important bearing on the inherently defective character of the present Constitution. Under Devolution Rule 5 the Ministers are bound to supply such information regarding Transferred subjects as the Government of India may require and in such form as they may direct. Under orders of the Government of India, the Ministers were required in the early stages to prepare material for submission to the Indian Statutory Commission in a certain form. The Legislative Council resolved to boycott the Commission and the Ministers, by not voting against the boycott, gave a clear indication that they did not wish to go against the mandate of the Council, but at a later date they made the declaration that they were prepared to submit the required information to the Government of India and not to the Commission. Meanwhile directions had been received

that all material should be submitted direct to the Commission. The then Governor, Sir Alexander Muddiman, thought he was justified in asking of the Ministers their complete and unqualified co-operation with the Indian Statutory Commission. He also thought that if the two Ministers were not prepared to give this co-operation, he had every justification in asking them to resign so that he might seek for that co-operation elsewhere. It must be noted here that the Muslim Minister, Nawab Muhammad Yusuf, was openly and avowedly in favour of co-operating with the Commission, so that inside the Ministry itself there was a fundamental difference of opinion. As the Ministers had not accepted the principle of joint responsibility, they could afford to hold divergent views on even such an important matter as this.

Ministers and the Council.

16. The position of the Ministers *vis-à-vis* the Legislative Council has, on the whole, not proved a source of great difficulty. All the Ministers, who have so far held office, have received reasonable support from the Council which has shown no real desire to increase their difficulties and has on the whole been very tolerant. No Minister has had any real difficulty in getting his budget through the Council. It is remarkable that in the first Council the demands for the Transferred subjects were generally passed without a division. In the later Council on several occasions Ministers were defeated on votes for reduction of grants, but as admitted by the Government, in no case was the vote regarded as one of no-confidence. So far there have been no motions questioning a Minister's policy in a particular matter and, as already stated, there has been only one instance of the Council having passed a motion of no-confidence against a Minister.

Ministers and the heads of departments.

17. The relations between the Ministers and heads of departments and Secretaries working under them have

been on the whole good. As the United Provinces Government has remarked, "the smoothness of the relations that have existed between the Ministers and their departmental heads in this province, is remarkable and is a testimony to a great amount of goodwill on both sides, specially when it is remembered that Ministers are Indians responsible to an Indian Legislature and, in most cases, lacking in previous administrative experience and that heads of departments in all cases are experienced permanent officials and in many cases Europeans." Something has been said in regard to a tendency on the part of Ministers to yield to the pressure of members of the Legislature and thereby embarrass the heads of departments. It must be said that this tendency has not been very prominent, and has depended very largely on the personalities of the individuals concerned. A strong Minister has been able to resist pressure more than a weak one, and likewise a strong departmental head has been less troubled than a weak one. In regard to the relations between Ministers and Secretaries the United Provinces Government has acknowledged that these have been good, and that only such honest differences of opinion have arisen as were inevitable, and they have generally been dealt with in a spirit of frankness and goodwill on both sides. The power which Secretaries possess of taking up to the Governor direct cases in which they differ in opinion from the Ministers, has, in some cases, proved irksome to the Ministers. The Reforms Inquiry Committee proposed that the rules should provide that the Secretary should inform his Minister of every case in which he differs in opinion from him and of all other important cases which he proposes to refer to the Governor. The Governor in Council of this province did not agree with the proposal which he regarded as unnecessary. In spite, however, of these occasions for friction, which were the result largely of an imperfect

and new Constitution, the United Provinces Government has readily acknowledged, "the Ministers and Secretaries have both worked amicably and well and that such difficulties, as have arisen, are only the necessary concomitants of a new order of things."

Finance Department under dyarchy.

18. The working of the Finance Department illustrates some of the difficulties of dyarchy. The functions of the Finance Department are merely advisory and no administrative department, whether Reserved or Transferred, need accept its advice. If any department refuses to accept the advice, the Finance Department has no further power than to insist that its advice shall be considered by the Government. The administrative departments have, however, assumed that an objection by the Finance Department is final, and have thus conferred on the department a power of veto which was deliberately withheld from it. At present the Finance Department belongs to the Reserved side of the Government and is in charge of the Finance Member. The Reforms Inquiry Committee recommended that the Finance Member should not hold charge of any large spending departments. The Government were unable to give effect to this recommendation as they thought that it would necessitate the creation of a new post which they regarded as an unjustifiable extravagance. The charge has been frequently made that the Finance Department has starved the Transferred departments, but it would appear that there is no real justification for such a charge, as, although it is true that the Transferred departments do not get as much money as they really require, yet this is only due to the fact that no money is available either for the Reserved or for the Transferred departments. In connection with the difficulties of the Finance Department under dyarchy, it may be mentioned that the administration of the Excise Department by successive

Ministers has resulted in a reduction of revenue amounting to more than half a crore of rupees; the effects of such a loss have not been confined to the department concerned or even only to the Transferred departments, but must recoil also on the Reserved departments. The Finance Department has no control over the matter, although it has affected the administration of the Reserved departments.

Some other defects of dyarchy.

19. Reference has already been made to the anomaly that Ministers have to administer Transferred subjects by employing officers over whom they do not have full control and whom they cannot themselves select. For instance, the posts of heads of certain departments on the Transferred side are reserved for officers belonging to the Indian Civil Service; the Commissionership of Excise and the Registrarship of Co-operative Societies are instances in point. The recruitment to the All-India Services in the Transferred departments has, however, been stopped, and in time the difficulties, which have arisen in the past, will not occur.

The restrictions on the powers of the Local Government to initiate legislation without obtaining the previous sanction of the Government of India, may sometimes cause difficulties with the Provincial Legislatures. The Local Government do not approve of the existing provision of the Government of India Act on this matter, and they would welcome any amendment which would free them from the need of constant reference for the sanction of higher authority.

Position of district officers under the Reforms.

20. It has been stated in some quarters that district officers have found it difficult to discharge their duties satisfactorily under the Reformed Constitution, but there seems no real ground for this complaint. It is true that there is a tendency on the part of Govern-

ment, which has to justify its actions before a Legislature, not to leave entire discretion in the hands of their local officers. This may have resulted in some curtailment of the exercise of the powers vested in the district officer, but no concrete cases have been cited to show that the district officer has found himself hampered in the discharge of his burden of responsibility under the existing system of Government. On the other hand, some district officers, at any rate, have found the assistance of members of the Council useful in dealing with controversial matters. The United Provinces Government is quite right in saying that "it is largely by the maintenance of close personal touch between the people and the officials in the districts that the work of administration is carried on with smoothness and efficiency." There is no doubt that people now do not look upon the district officer as the representative of an alien bureaucracy; they are more prepared to confide in him their joys and sorrows.

THE PROVINCIAL LEGISLATIVE COUNCIL.

Composition.

21. The United Provinces Legislative Council as constituted under the Government of India Act, 1919, consists of 123 members of whom 100 are elected, 21 nominated and 2 *ex officio* who are members of the Executive Council. Of the 21 nominated members, 16 are officials and 5 non-officials, the latter including one representative each of the Anglo-Indians, the Indian Christians and the Depressed Classes. The two remaining nominations are utilized by the Governor to redress communal inequality or to bring to the Council men of position and influence who would otherwise not care to seek election. The Governor also has power to nominate two expert members for the purpose of any particular legislation. Of the elected members 90 come from general constituencies and 10 from special. The general

constituencies are divided into 60 Non-Muhammadan, 29 Muhammadan and one European. They are further classified into rural and urban, the former returning 77 and the latter 12 members, the European constituency extending to the whole province. Election in the special constituencies is by mixed electorates. Of the 10 representatives returned by the special constituencies 4 come from the British Indian Association of the Taluqdars of Oudh, and 2 from the Agra Province Zamindars, making a total of 6 representatives of the landlords. The Upper India Chamber of Commerce and the United Provinces Chamber of Commerce return 2 members and one member respectively. The University of Allahabad has one representative.

The Franchise.

22. The franchise qualifications for the general constituencies are based on (1) community, (2) residence, and (3) (*a*) ownership of a building or agricultural land, (*b*) tenancy of a building or land, (*c*) assessment to Municipal or income-tax, or (*d*) receipt of a military pension. The community qualifications prescribe that an electo must belong to the community for which the constituency is meant; according to this qualification the Anglo-Indians, the Indian Christians, the Sikhs, the Parsis, the Buddhists and the Hindus all belong to the Non-Muhammadan constituency. The qualifications for the urban constituencies are :—

(*a*) ownership or tenancy of a house or building of a minimum annual rental value of Rs. 36, or

(*b*) where there is no house-tax, assessment to a Municipal tax on a minimum annual income of Rs. 200, or

(*c*) possession within the constituency of any of the rural qualifications based on the holding of land, or

(*d*) receipt of a military pension or being a retired or discharged military officer, non-commissioned officer or soldier of His Majesty's regular forces, or

(*e*) assessment to income-tax.

In the case of qualifications (*a*), (*b*) and (*c*) an elector must be resident within the constituency or within two miles of its boundary and in the case of (*d*) and (*e*) he must be resident within the constituency itself.

The qualifications for the rural constituencies consist of residence in the constituency and—

(*a*) in an urban area falling in the constituency, ownership or occupancy of a house or building of a minimum annual rental value of Rs. 36 or assessment to a Municipal tax on a minimum annual income of Rs. 200, or

(*b*) ownership of a land in the constituency for which annual land revenue of Rs. 25 or more is payable, or

(*c*) tenancy of land as permanent tenure-holder or fixed-rate tenant or (in the case of Oudh) as an under-proprietor or an occupancy tenant, for which an annual rent of Rs. 25 is payable, or

(*d*) tenancy as an ordinary tenant-in-chief of land for which an annual rent of Rs. 50 is payable, or

(*e*) assessment to income-tax, or

(*f*) receipt of a military pension or being a retired or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

For the European constituency an elector must have a place of residence in the United Provinces and possess any of the qualifications prescribed for a general rural or urban constituency.

The franchise in the Agra Province landholders' constituencies consists of residence in the constituency and payment of Rs. 5,000 or more as land revenue. The franchises in the British Indian Association and the Chambers of Commerce are limited to the membership of these bodies. The franchise in the University constituency is confined to members of the court, the executive council and the academic council, the doctors, masters and graduates of seven years' standing.

Besides, an elector in any constituency must not have certain general disqualifications, namely,—

(*a*) not being a British subject,

(*b*) having been adjudged by a competent court to be of an unsound mind,

(*c*) being under 21 years of age,

(*d*) having been convicted for certain election offences.

The sex disqualification was removed by a resolution of the local Legislative Council passed on February 1, 1923.

Working of the Franchise.

23. The first electoral roll of the general constituencies prepared under the Government rules contained 1,347,922 electors who were all males. The one prepared in 1923 contained 1,509,127 electors of whom 49,076 were females, the sex disqualification having been removed in the meantime. The last electoral roll prepared in 1926 had on it 1,598,996 electors of whom 51,056 were females. The number of voters in urban constituencies rose from 77,115 in 1920 to 116,886 in 1923 and to 151,445 in 1926. The increase in the rural constituencies has been from 1,264,101 in 1920 to

1,383,315 in 1923 and 1,437,469 in 1926. This gradual increase in the electorate undoubtedly indicates an increase of desire in the people to get themselves registered. Other factors also have contributed to it especially in the urban constituencies, where the house rents have risen with the general rise in prices. The extension of the franchise to women and the increasing care with which the rolls have been prepared account for a certain proportion of the increase, but the proportionately higher increase in the urban constituencies coupled with the fact that there have been a larger number of claims for registration in urban constituencies than in the rural ones shows, in the words of the United Provinces Government, that "in the towns there is more interest in politics and the value of the franchise has clearly been appreciated to a greater degree than in the villages." That the people have evinced greater interest is also shown by the very marked increase in the number of claims and objections. In 1923, 3,538 claims were made: in 1926 their number increased to 6,350, an increase of almost 75 per cent. The number of objections increased from 1,613 in 1923 to 1,702 in 1926. Here also we find that more than half the claims and nearly half the objections were made in urban constituencies.

It will be useful to compare the size of the present electorate with the population of the province. The total electorate of 1,598,996, is 3·5 per cent. of the total population of the province. The male electorate of 1,547,938 is 12 per cent. of the population of male adults of twenty years and over. The female electorate of 51,056 is 0·4 per cent. of the population of the female adults of twenty years and over. The proportion of electorate to population in the rural constituencies is much smaller than that in the urban constituencies, being approximately 3 per cent. in the former and approximately

10 per cent. in the latter. These figures show that a very small percentage of the population is enfranchised under the existing rules and that the urban classes are enfranchised to an extent more than three times that of the rural classes. These figures will be very useful when we come to discuss our proposals with regard to Franchise.

The exercise of the vote.

24. An increasing proportion of electors has exercised the franchise at each successive election. Of the male electorate 33 per cent. went to the polls in 1920, 43·7 per cent. in 1923 and 51·6 per cent. in 1926. The proportion of females who exercised the vote rose from 2·8 per cent. in 1923 to 10 per cent. in 1926. We think it useful to give the following statement taken from the United Provinces Government Memorandum to show the proportion of electors who voted in the different classes of constituencies in 1926 :—

Non-Muhammadan urban	...	...	45·5 per cent.
Non-Muhammadan rural	..	...	49·3 ,, ,,
Muhammadan urban	...	...	42·2 ,, ,,
Muhammadan rural	...	...	64 5 ,, ,,
Agra landholders	...	...	58·0 ,, ,,
Taluqdars of Oudh	...	...	53·3 ,, ,,
Chambers of Commerce		uncontested.	
Allahabad University	...	...	71·7 per cent.
Europeans	...	...	14·2 ,, ,,

In this election several constituencies showed a poll of over 70 per cent. of the electorate and two of over 80 per cent. The European poll was only 14 per cent. This shows the lack of interest of the Europeans in the present Legislatures. The women also showed an increased interest. The United Provinces Government seem to think that the increased polling in 1926 was appreciably due to prominence of communal issues and to the greater activity of politicians rather than to any genuine growth of interest in the electors. It is difficult

to judge precisely as to what causes brought about this increase in polling other than an increase of interest in the electors. We are disinclined to think that communal issues could have had much to do with the increase because the constituencies being separate there could be no real reason for one community competing with the other at the polls. It is quite possible, however, that the activity of politicians may have created increased interest by giving a stimulus to the awakening which was unmistakably coming about in the electors themselves.

Constituencies.

25. With a restricted franchise such as described above and the limited number of seats open to general election, the size of the constituencies has inevitably been large. For the constitution of the general rural constituencies the district has, as far as possible, been adopted as the territorial unit with the result that as many as 44 out of the 52 of the Non-Muhammadan and 11 out of the 25 of the Muhammadan rural constituencies comprise a single district each. The remaining constituencies have been formed by grouping two or more districts. The area and population of the various constituencies vary very greatly. The average area of Non-Muhammadan constituencies in the plains is 1,895 square miles, the lower limit being 910 and the upper 4,368. In the hills the size is much larger, varying from 2,721 square miles to 5,612 square miles. The Muhammadan rural constituencies are of course much bigger, the average area being 4,262 square miles. Similarly marked are the variations in the population. The average for the Non-Muhammadan rural constituencies is 716,842 inhabitants and for the Muhammadan rural constituencies 247,284. The averages for the urban constituencies are 117,330 and 133,466 respectively. The number of electors in the

constituencies shows corresponding variations. The average number of electors in the urban constituencies is 12,408 in the Non-Muhammadan and 12,914 in the Muhammadan; whereas in the rural constituencies the average is 24,230 in the case of Non-Muhammadan and only 7,100 in the case of Muhammadan. The huge disparity in the average number of electors per constituency in the rural and the urban areas is inevitable; for, in the words of the United Provinces Government "if the rural areas were given the same representation as the urban areas on a strict population basis, they would be represented by 322 instead of 77 members." This inadequacy of representation as compared to their populations is, however, offset by the fact that the rural interests predominate in the composition of the Legislative Council, for as many as 77 general constituencies are rural as against 12 urban. Coming to the special constituencies we find that the two Agra landowners' constituencies have 380 and 336 electors respectively whereas the Oudh constituency, which returns 4 members, has 373 electors. The Upper India Chamber of Commerce has 67 electors, the United Provinces Chamber of Commerce 103 and the Allahabad University constituency 4,101.

Party organization.

26. At the time of the 1920 elections there were no parties in existence and candidates were mostly elected on personal grounds. By the time of the 1923 elections the Swaraj Party had come into being and by means of its organization achieved considerable success in those elections. The Liberals also claimed to possess an electoral organization at that time but this organization does not appear to have resulted in the success of a great many candidates: they lost ground very markedly. By reason of their personal influence with the rural electors, landholders again captured a majority of seats. In the

1926 elections communal feeling is reported to have played a large part, but again the Swaraj Party by reason of effective organization achieved a substantial measure of success though less than before. The landholders lost some ground in the western districts but they were again returned in very great majority. The classes most largely represented amongst candidates at all elections have been landholders and lawyers, and the candidates are stated to have, on the whole, been representatives of the middle class population. Titled landholders have begun to lose their initial shyness of political life and the present Council contains nearly twenty members who belong to titled families. An analysis of the elected members of the Council since 1921 gives the following results :—

	1921 to 1923.	1924 to 1926.	1927 to 1929.
Landholders ..	46	51	45
Lawyers ..	44	31	34
Others	10	18	21

Election arrangements and other matters relating to elections.

27. The election arrangements have been found to be generally suitable and have worked smoothly at each successive election. The United Provinces Government thinks that there would probably be considerable difficulty in some districts in making the necessary arrangements if the franchise were materially widened. Experience shows that one polling station can deal with an electoral roll of 2,000 to 2,500 electors in one day. But that is by no means an insurmountable difficulty. In case of an increase in the franchise it may be possible to have elections spread over more than one day which course would, perhaps, be welcomed both by the candidates and by the staff at polling stations. There is no doubt that canvassing in the rural constituencies is in many cases confined to obtaining support of influential persons, but there is a distinct change coming on in

so far that a rural elector is not now so much amenable to superior influence as he used to be. Candidates have, therefore, to establish relations with the electors in addition to obtaining support of influential persons. That corrupt practices are indulged in cannot be denied, but there is no evidence to show their exact extent although as stated by the United Provinces Government most district officers have reported that there is no general complaint of the existence of such practices.

The figures of amounts spent by candidates on the different elections are interesting :—

1920	...	...	... 2·91 lakhs.
1923	...	...	... 3·95 „
1926	...	..	... 5·65 „

The steady increase in these figures shows unmistakably that candidates have been making more elaborate arrangements for canvassing and for bringing voters to the polls at successive elections. Members have shown interest in their constituencies by asking questions and moving resolutions. In some cases local matters of even comparatively minor importance have been very well ventilated in the Council. It is also by no means unusual for the members to keep in touch with their principal supporters and to address political meetings at headquarter towns, but few members have been known to tour in the villages. Real interest in the welfare of the electors, if such interest can be judged by going about among the electors, is said to be confined to a very select band of members who regard themselves in a real sense as the representatives of their constituency and make a real effort to keep in touch with them. The unduly large size of the present rural constituencies has undoubtedly a great deal to do with the inability of members to maintain personal touch with their electors. This is proved

the fact that the members representing urban constituencies are known to have been in touch with their electors to a far greater degree than those who come from rural constituencies.

The following statement shows the number of days on which the Council sat in the years 1921 to 1927 and also the number of days which were reserved for Government business as compared with those which were allotted for private members' business :—

	Total sittings.	Government days.	Private members' business.
1921 ...	65	38	28
1922 ...	53	27	26
1923 ...	37	23	14
1924 ...	41	22	19
1925 ...	46	24	22
1926 ...	53	43	10
1927 ...	45	27	20

WORKING OF SOME OF THE RESERVED DEPARTMENTS.

(a) The Land Revenue Department.

28. The Land Revenue Department affords an interesting illustration of the manner in which a Reserved department has been treated by the Legislature. As is well known, land revenue administration touches the people more closely than any other activity of Government, and it is, therefore, only natural that it should have occupied a very considerable amount of the time of the Legislative Council. Two pieces of legislation of far-reaching importance, namely the Oudh Rent Act and the Agra Tenancy Act were passed by the Reformed Legislature. Both these Bills were of a very contentious nature, but on the whole the attitude of the Legislature was eminently reasonable and satisfactory. The Agra Tenancy Act, which was introduced in the Council in 1926, was designed to remove the main disabilities of the landholders on the one side and the tenants on the

other, but landholders who held a majority in the Legislature did not look with favour on certain provisions of the Bill. They agreed to the introduction of the Bill and to its reference to a Select Committee. They however, desired a number of amendments which did not meet with the approval of Government, whereupon they turned to the Swarajists, the avowed supporters of the tenantry, and made a pact with them in order to make a common cause against the Government. The result of this pact was that the Legislative Council amended the Bill in regard to six provisions which the Government found it impossible to accept. His Excellency the Governor sent the Bill to the Council with the recommendation that the original provisions should be restored. The Government accepted two important amendments in favour of the tenants which removed the main reason for the Swarajists' compact with the landlords, whereupon that party abandoned their former allies and by voting with the Government restored the original provisions as suggested by the Governor. The Bill was thus passed in a form substantially satisfactory to the Government. Besides these two enactments, to which reference has been made, the Legislative Council has passed twelve Acts dealing with Rent or Revenue matters. With the exception of the first Settlement Bill which had to be dropped, all this legislation was passed without difficulty. Another Settlement Bill was, however, introduced at a later date which has now been passed by the Council. Thirty resolutions on matters controlled by the Revenue Department have been before the Council. Eighteen of these were adopted and twelve withdrawn on assurances given by Government. An examination of the subject matter of these resolutions will show that none of these was such as can be called unreasonable. It may, therefore, be safely concluded that the Council has not indulged in irresponsibility in dealing with the Revenue Department,

although being a Reserved department vitally affecting both Government and the people, it could have been used by the Council as a powerful lever to make the position of Government difficult.

(b) The Irrigation Department.

29. The attitude of the Legislature towards the Irrigation Department has been very favourable. There is a general recognition of the value of the work of this department. The Government has rightly remarked that although criticism has not been lacking, yet it has, for the most part, been fair and reasonable, and also in some cases, constructive. The Irrigation budget was passed year after year without much criticism. Few reductions in the demands were made and only one of these was carried against Government; that one was in 1926 and was a censure on Government for refusing to proceed with the Irrigation Rates Bill. In the year 1927 the Council appeared to be much more critical with the objects of this department, but the reasons for this change of attitude were probably that it was the first session of a new Council, that owing to more money being available, the amounts allowed to the departments in 1926-27 showed a considerable increase over those of the preceding lean years since 1921, and that the Council was still displeased with Government for refusing to proceed with the Irrigation Rates Bill. Cuts to the amount of 1·02 lakhs were carried against the Government, but none of this money was restored.

(c) The Forest Department.

30. The Legislative Council cannot be said to have been obstructive in respect of the work of the Forest Department although it has been said that the Legislature has shown comparatively little interest in the main aspects of Forest administration and the scientific activities of the department. It has been inclined to support the claim of villagers to benefit from

products which the State controls; e.g., grazing concessions, concessions to the village right-holder, concessions to the contractor who buys timber from the forest, have readily found support. There has been distinct improvement in regard to criticism of the department by the Council. The attitude of the Council towards the utilization activities of the department has saved the taxpayer recurrent losses which ran into a huge sum. The Government started certain factories to work forest products which incurred very heavy losses and the Legislative Council by its unsparing criticism and insistent demand for the immediate abandonment of the ventures brought into prominence the futility of Government trying to run a business concern. In the end the factories were disposed of and the Government saved from losses which had to be provided for in every budget. The Government admits that the Legislative Council had undoubtedly every justification for criticism and for demanding a curtailment of losses at a time when money could ill be spared, and further, that on the whole the attitude of the Legislature towards the department's budget, if somewhat unsympathetic, has never been definitely hostile or obstructive. The Chief Conservator's main complaint is that "the Reforms have resulted in a most serious and almost overwhelming increase in office work and worry which cripples the clerical staff and makes it difficult, if not impossible, for officers to avoid a tendency to devote themselves to comply with rules and avoiding objections rather than to the interests of the forests." This increase of work and worry the Chief Conservator attributes to "the tyranny of the Audit Department" and doubts whether Government "derives any real advantage from this elaborate system of check and inspection." He regards the interference by Audit as being so far a most dangerous concrete result of the Reforms.

31. The Council is reported to have been unsparing in its criticism of the Police Department, but never to have so far failed to vote the necessary supply for it. It is not to be wondered at that the Legislative Council has devoted much time to the discussion of Police affairs. In some years it has reduced the Government demands, but never very seriously, and it has passed the last four budgets with practically no reductions worth mentioning other than those accepted by Government. The Government has admitted that the Council has had sufficient sense of responsibility not to use its powers to cripple the Police administration. The Governor has only twice had to use his power of restoration, and in neither case was the amount a large one. The 1927 budget was discussed at greater length than any of its predecessors. The Council devoted two whole days to its discussion, a good deal of which took the form of an attack on the Inspector-General for remarks in his Annual Report dealing with the criticism of politicians on Police administration. The Council regarded these remarks as a breach of the privilege of the House and even the Government's supporters felt so strongly on the subject that a difficult situation was averted only by the repudiation of the Inspector-General of any intention on his part of reflecting on the conduct of any member of the Council. One of the cuts carried by the Council took the form of a censure on Government for failing to reduce the number of Assistant and Deputy Superintendents as recommended by an Economy Committee which had sat the previous year. It may be argued that the Council had justification for carrying such a cut. As a further instance of the reasonable attitude of the Council towards the demands of the Police Department, mention may be made of a supplementary demand for 1½ lakhs for an increase in the strength of the armed police which had evoked considerable opposition. The demand was carried without

(d) The Police Department.

serious reduction in spite of determined opposition by the Nationalist and Swaraj Parties. The administration of the Police Department has been under the Home Member, both incumbents of which office have been Indians. Both these gentlemen have had no difficulty with the Council which has shown every consideration to them. In fact, the present Home Member is, perhaps, the most popular and respected member of Government with whom the Council had to deal since the inauguration of the Reforms. He has acknowledged that the Council has never created difficulties in the successful administration of the subjects entrusted to his charge, and it is well known that any measures which he may like to promote would go through without serious opposition.

WORKING OF SOME OF THE TRANSFERRED DEPARTMENTS.

(a) The Agricultural Department.

32. In the year when the department met the Reformed Council for the first time, it had to put up with a good deal of criticism and had to be content with a budget grant 8 lakhs short of what was asked for. The department had not gained the confidence of the Council which had still to be satisfied that the expansion of the department was going to be of real benefit to the province. The department did not take long to win the support and goodwill of the Council because, as admitted by the United Provinces Government, in the very next year the hostile criticism of 1921 gave place to a real understanding. Since then the Council has year by year passed the department's demand without reducing it by a single rupee—a unique record. Members of all sections of the Council are now united in the view that expenditure on agriculture should be increased. The interest of the Council has reacted on the work of the department which

is now said to be in closer touch with the needs of the province than at any earlier period. The following striking tribute has been paid by the United Provinces Government to the work of the department since the introduction of the Reforms: "There is cause for satisfaction with the record of the department since 1921. It has adapted itself to the Reformed Constitution and has made full use of the greater opportunities for development which that Constitution has afforded to it. There has been development in every direction and much work has been done, the full results of which will only be revealed in the future. But the province is a large one and the vast majority of its people are dependent on the land for their livelihood, so that it will take time before the people as a whole begin to enjoy the full benefits which the work of the department will ultimately bring to them." Three Ministers, Mr. C. Y. Chintamani, Nawab Sir Muhammad Ahmad Sa'id Khan and Thakur Rajendra Singh, have administered the affairs of the department. The United Provinces Government speaks of their work in the following terms: "Mr. Chintamani was not himself a landholder but took a keen interest in the department and was responsible for the initiation of the policy which has led to the rapid development of the department's work, and his example was followed by his two successors, who both had a hereditary interest in the land and its problems." The department has been fortunate in having Mr. Clarke as its head since 1921. He is stated to have completely won the confidence of successive Legislative Councils and to have kept in close touch with all the three Ministers with each of whom—in spite of their conflicting politics—his relations have been excellent.

33. A reference to the United Provinces Government's Memorandum will show that the period since

(b) The Excise Department.

1921 has been one of very considerable activity in the Excise department. The principal administrative reforms introduced have been—

(1) enhancement of duties;
(2) extension of the contract supply system to hemp drugs;
(3) substitution of the surcharge system of licence fees for the auction system;
(4) extension of the sealed bottle system of vend of country spirit;
(5) creation of licensing boards and a provincial advisory board;
(6) extension of the tree-tax system of *tari;*
(7) curtailment of the hours of sale; and
(8) reduction of the number of shops.

The department has been under three successive Ministers, each of whom has introduced far-reaching changes. The department has been the subject of much criticism by the Legislative Council whose feeling has been in favour of a policy in advance of that actually adopted by Government. It has been recognized that on the whole the Council has dealt with the problems of the department in a practical manner, and has realized the need for ordered progress.

In regard to the relations which have existed between the Ministers and the administrative staff of the department, the Government has the following to say: "In no other department has Ministerial policy involved so many and so extensive changes in the previously existing system, but in no other department have the staff co-operated more loyally with the Minister. There has been little interference by any Minister in those details of administration which should be left to the head of the department and there have been no difficulties in the

matter of appointments." This department enjoys a peculiar position as it is dependent on Reserved departments for the actual carrying out of its work. The Police and the District Officers are the executives which carry out the department's policy. In spite of the very complicated nature of the relations between the Excise and the Reserved departments, instances of conflict have not been many, although it must be conceded that the existing position of the department is extremely anomalous.

(c) The Industries Department.

34. The United Provinces Government admits that the Reforms period has been one of considerable activity in the Department of Industries; it goes further and says that it is unquestionable that this activity was stimulated by the Reformed system of Government. Important developments in the department, such as the institution of the Stores Purchase Department, the industrial survey and the opening of new schools, owe their inception to the Ministers and the Council. During the Reforms period economies have been effected in the department, and new developments have been initiated. The Government have recently reviewed the working of the Stores Purchase Department with the following observations: "Government are confident that this department has a future of much usefulness before it. Its value in the stimulation of industries is obvious. Even from a narrow commercial point of view it should pay for its running several times over from the savings effected." All this is to the credit of those who have worked the Reformed Constitution.

(d) The Education Department.

35. In no other department has the Council taken more interest than in the Education Department. There is no doubt that since the Reforms "education has been more in the public eye than previously," and that " the Council has reinforced the claims of the department on

public funds." We refrain at this stage from discussing the activities of this department at any length as we have heard no evidence in regard to it. We would, however, like to be given an opportunity to submit a supplementary Note on the subject of Growth of Education after we have been favoured with the Hartog Committee's Report.

(e) The Medical Department.

36. The Medical Department has had rather a chequered career during the period of the Reforms. There has been conflict of public and scientific interest on the question of the encouragement of the indigenous systems of medicine. There has also been conflict of service interests in the matter of appointments and the conflict of racial interests in the matter of medical attendance. There has been deterioration of medical administration under District Boards. All these factors have combined to make the position of the Minister in charge of the medical affairs one of considerable difficulty. In spite of all this, the relations between successive Ministers and Inspectors-General, of whom there have been five during the Reforms, have on the whole been quite friendly, though their points of view have in many matters been diametrically opposed.

(f) The Public Health Department.

37. The following paragraph from the Government Memorandum will bear reproduction, as it sums up the position of the Public Health Department under the Reformed Constitution :—

"The Ministers in charge of the affairs of the department have been Pandit Jagat Narain, Raja Parmanand, and Rai Rajeshwar Bali. The department has been fortunate in having had as its Director since 1919 Lieut.-Colonel C. L. Dunn, who has shown much initiative and energy in developing public health administration in the province and laying sound foundations for future progress. He has from the first realized the need for keeping in close touch with

the members of the Legislative Council as well as the Minister, with whom his relations have throughout been satisfactory. Rai Rajeshwar Bali pursued a policy of cautions advance and invariably refused to move till himself convinced, but once convinced he used all his influence with the Legislative Council to obtain the adoption of his policy. He took great interest in the department's work and himself initiated schemes for the improvement of pilgrim centres and village sanitation, and also assumed responsibility for rejecting or modifying other schemes which he considered impracticable."

The United Provinces Government has pointed out the necessity for co-ordination in the work of this department between the different provinces. It has raised the issue whether for the purposes of public health India should not be treated as one country instead of as a collection of provinces. It is added that in the existing conditions the good work of a province with an advanced system of public health administration might be rendered nugatory owing to its proximity to a province with a less advanced system. We consider that the new Constitution should provide some means for co-ordinating the activities of different provinces in this as well as, perhaps, in certain other departments.

THE LOCAL SELF-GOVERNING BODIES.

38. One of the principal duties of the Indian Statutory Commission as enjoined by section 84A of the Government of India Act, 1919, is to inquire into the development of self-governing bodies which mainly are the Municipalities, the District Boards and the Village Panchayats. The Municipalities and the District Boards are, next to the Legislative Council, the most important representative institutions in these provinces. . The authors of the Montford Report emphasized the need of the introduction of complete popular control in the local

Reason for inquiry.

self-governing bodies : they considered that "responsible institutions will not be stably rooted until they become broad-based." In these provinces the principle had already been recognized to some extent before it was enunciated at those illustrious hands.

The Municipalities.

39. The United Provinces Municipalities Act of 1916 which has continued in operation with a few amendments gave non-official chairmen to almost all the Municipalities : only 5 out of the 85 Boards have nominated official chairmen. It gave very large elected majorities : in most Boards Government's power of nomination is restricted to two members. It gave them further freedom in regard to taxation and budget, and enlarged control over the establishment. Under the Act only two classes—Muhammadans and Non-Muhammadans—are given separate representation on religious grounds and provision is made for weighted representation to the Moslems according to an elaborate scale varying with the population in each area. It laid down a rather restricted franchise, and a private Bill (supported by Government) which became law in 1922 reduced it generally to the level of the Council franchise. The qualifications are chiefly based on ownership or tenancy of a house or a building of a certain annual rental value and a Municipal tax on income, the amounts of the rental value or the income assessed varying in the different Municipalities. "The present Municipal franchise is *mutatis mutandis* similar to and in some respects lower than that for the District Boards. Though in some towns it is as restricted as that for the Legislative Council, in a majority of towns it is somewhat more liberal." The chief functions of the Boards are conservancy, water-supply, street-lighting, provision of medical relief by establishing or supporting hospitals and dispensaries, and maintenance

of primary schools. Every Board has its own staff and may keep an Executive Officer: in the case of the ten larger Municipalities the Government can even require one to be appointed. An Executive Officer is appointed by the Board subject to the Local Government's approval; he may be punished or dismissed by the Board, but he has a right of appeal to the Government. The district officer and the Commissioner have some powers of interference in the administration of the Boards, the Education and Public Health Departments of the Government have certain powers of inspection, and the Local Government has certain restricted rights of general supervision and punishment by way of suspension or dissolution of the Boards. The real control of Government is exercised in the making of grants.

The District Boards.

40. The United Provinces District Boards Act of 1922 was the outcome of the labours of two committees appointed by the pre-Reformed Legislative Council in 1918 and 1919. The Government considered it desirable to defer legislation on the District Boards till the Reformed Government had come into being. An Act was, however, passed in 1920 providing for the establishment of panchayats in the villages possessing a very limited representative character. The District Boards Act of 1922 completely re-organized District Boards. Its main features were:—

(1) The complete disappearance of the official element including district officers;

(2) elected non-official chairmen;

(3) relaxation of Government control to a much larger extent than in the case of Municipalities;

(4) power to enhance the percentage of the local rate and to impose a tax on circumstances and property;

(5) electorates based on a wide franchise comprising (*a*) property qualification, and (*b*) educational qualification;

(6) restriction of nomination to only two non-official members, one of whom must ordinarily be selected from the Depressed and Backward classes;

(7) wide powers of control over staff and agents, and

(8) statutory obligation to set up tahsil committees.

The most important feature of the District Boards is that they are not merely advisory or legislative bodies, but have very large administrative powers. The Committee system introduced by the District Boards Act was a novel feature and a great many evils noticed in the District Board administration have been due to this mixing up of administrative and legislative functions. There are 48 District Boards in the province corresponding to the 48 districts, having under their jurisdiction no less than 94 per cent. of the total population of the province. The normal district in the Gangetic Plain has an area of about 1,600 square miles and a population of a million. But there are great variations: one district has a population of over 3 and another of nearly 2 millions. The Act makes provision for weighted separate representation of the Muhammadans varying with their population. The Boards have a large variety of functions, the most important of which are the provision and maintenance of communications, hospitals, dispensaries, poor houses and asylums, Vernacular education, famine preventive and relief works, and pounds. The sources of revenue are:—

(*a*) The local rate which is 5 per cent. of the annual value of the estates, the total yield

for the province from this source in 1926-27 being about 37 per cent. of the total income;

(*b*) Government grants which in 1926-27 accounted for over 45 per cent. of the Boards' total income;

(*c*) tax on circumstance and property which has been introduced only in seven districts;

(*d*) other sources such as the fees from cattle pounds, ferries, schools and hospitals, medical contributions and fairs and exhibitions. The total yield from these other sources in 1925-26 amounted to about 18 per cent. of the total income.

Of the total expenditure in 1925-26, education consumed nearly 50 per cent., public works 25 per cent., and medical and public health nearly 13 per cent.

Working of the Municipalities.

41. The elections to the Municipal Boards have been very keenly contested at every successive election. For obvious reasons, it is in the towns far more than in the rural areas that the value of the vote and of representative government is appreciably recognized by the people. "The keen contest" says the United Provinces Government, "which in the larger Municipalities characterized every general election since the 1916 Act came into force, marked both the general elections since the inauguration of the Reforms." The contests in 1923 were, however, unusually keen and "a good deal of new blood was let in." The Boards have shown a capacity to make proper selection of chairmen, and in general communal considerations have not vitiated their choice. The views of the United Provinces Government in this matter are well worth quoting. "Most Boards have elected two vice-chairmen, some of these belonging to the chief minority community. A few Boards with a majority of

Hindu members have elected non-Hindu chairmen Recently a Muhammadan has been elected as Chairman of the Benares Municipality; Cawnpore had till recently, and Saharanpur still has, a Parsi chairman."

The Boards have come in for a certain amount of justified criticism at the hands of the United Provinces Government. We have not had the privilege of examining any non-official on their working, and we base our conclusions mostly on the Memorandum submitted by the Government. "The conduct of business in the meetings has on the whole not been business-like." "While the Boards now show a more lively interest in the maintenance of a regular water-supply, their management has not, generally speaking, been sufficiently business-like." "Not all Boards have adequately realized the importance of an efficient staff." "While the popularity of piped water-supply has been growing, modern systems of water-borne sewerage are almost non-existent." "By 1920 the complaint that they (the roads) had deteriorated, especially in the large towns, was general." "The Municipal Boards' handling of their educational system has in general been less efficient than the District Boards." "In the matter of collections, the Boards' record has not been very encouraging."

These constitute the more important of the adverse criticisms that the Government has to make. But in assessing their value we must consider the difficulties and circumstances in which the Boards have worked. The Boards were almost suddenly given a non-official character, and it does require some time for people untrained in the art of government to acquire habits of business-like efficiency. Great difference has been due to what the Government call "personal equation," and it is admitted that "some Boards were, however, more business-like and managed to finish their business in a

much smaller number of meetings. Industrial members —sometimes busy men of affairs—were often to blame for meetings proving abortive." If in regard to water-supply the Boards have not been so active as they might have been, it was largely a question of finances. The people do not fully realize that they must pay for water just as they pay for street-lighting. The point was brought out clearly by Sir Ivo Elliott (Secretary, Local Self-Government, United Provinces) in his reply to question No. 33 in the course of his examination before the Joint Free Conference. He said: "Several towns have, without the stimulus from Government themselves proposed the establishment of water-works. The difficulty has been a financial difficulty. It is more generally understood, I think, by the population that they should pay for electric light than that they should pay for water. There is no particular objection to paying a special charge for electric light supplied by the Municipality and consequently the electric light schemes finance themselves from the very beginning. The introduction of a water-works system is obstructed by the difficulty of having to impose a water-rate. That results in the fact that no proposal comes up to the Government from Municipal Boards for water-works which does not ask for a grant of, as a rule, half the capital cost of establishing the water-works. It is not always financially possible to make that grant, and consequently the actual progress in the development of water-works is slower than it is likely to be in the case of electric light works." The financial difficulties of the Municipalities have been very great indeed and have hampered every sphere of their activity. They have been left to their own resources, for "grants and contributions form almost a negligible fraction" of their revenues. Most Boards have, however, taken steps to impose fresh taxation. In the imposition of taxation,

which is always a difficult matter for all representative bodies, the Boards have shown sufficient responsibility. In seven years the income raised by them has risen from 106 to 144 lakhs; and the increase is made up mostly of increased income from taxation which rose from 69·39 to 103·57 lakhs. The incidence of Municipal income rose from Rs. 3-13-6 in 1919-20 to Rs. 5-4-0 in 1926-27. "The pre-Reform policy of substantial grants from provincial revenues for the establishment of water-supply systems has been discarded," says the United Provinces Government. If drainage on modern lines is lagging behind, it is because the modern system of sewerage is an expensive one. Those Boards which can afford it, such as Cawnpore and Lucknow, have introduced it. The deterioration of roads has assumed a great importance, but here again finances have proved the great stumbling block. In the words of the United Provinces Government "no Board has any reserve capital of its own, and Government are not in a position to make all the loans asked for by them." And the rapid growth of heavy lorry traffic has imposed heavy and unexpected strain on Municipal roads. The Boards had limited revenues at their disposal and "roads were starved for the sake of balancing the budget." The bigger Municipalities are, however, taking interest in roads; Lucknow and Cawnpore have already a number of asphalted roads. "In the matter of electric street-lighting," says the United Provinces Government "these provinces have recently made rapid progress. Including six towns which adopted electric-lighting since January 1, 1921, there are at present eleven, the lighting arrangements of which are satisfactory." In regard to medical relief, whereas certain Boards have shown reluctance to maintain or subsidize the hospitals that already existed—here, too, there is the plea of financial inadequacy—some of them have established dispensaries providing for medical

relief on indigenous lines, which are decidedly cheaper and more congenial to the Indian temperament. Government thinks that of the popularity of such dispensaries "there is no doubt." The Boards have incurred increasing expenditure on conservancy. The expenditure on account of health officers and sanitary inspectors went up within the last seven years from 1·52 to 2·70 lakhs; but the real position is better than these figures indicate because the Boards no longer contribute towards the pay, etc., of the superior staff which has been provincialized. Much of the steady improvement of sanitary conditions has been due to the Public Health and Medical Departments, but it is admitted that "they (the Boards) have generally shown readiness to follow the departments' lead." This point touches the crux of the matter, for, it will be seen, the great difficulty under which the local bodies have been labouring is the absence of direction and advice from above. In regard to education the Boards have displayed great activity: thirty-three Boards have introduced compulsory primary education in the whole or selected portions of the area under their jurisdiction. Collections of taxes have not been as efficient as could be desired; but that was largely due to inefficient staff. That is another major difficulty against which the Boards have had to contend. The staff is too much under the control of the Boards and the system has all the evils of a service at the mercy of the Legislature. In the words of the United Provinces Government "local Boards' work could easily attain a higher standard if the selection and control of the staff be reduced to a proper system, the tenure of office be made reasonably secure, and the scope for intrigue and undue interference by members be minimized."

Working of the District Boards.

42. "Since the passing of the United Provinces District Boards Act of 1922 only two general elections

have been held; both were very keenly contested." "The lack of vitality from which the old District Boards suffered was responsible for the poor and irregular attendance of non-official members. The first year after the Boards' reconstitution showed an all-round improvement. Business was gone through with the smallest number of meetings; abortive meetings were fewer and the percentage of adjourned ones went down even more." With these remarks the United Provinces Government begin their account of the working of the District Boards. Criticism follows soon after. "Interference on the part of individual members with the postings and transfers of the staff led to administrative deterioration." "The Boards cannot as a whole be said to have fully exploited their own sources of income." "Little regard to economy has been paid by some Boards." "It must be confessed that the keeping of accounts and the observance of rules shared deterioration in common with many other aspects of the Boards' administration." "The plain fact is that the roads were everywhere starved. This was the legacy which the reconstituted Boards inherited from their predecessors." "The Boards continued to display little interest" in the development carried out by the Department of Public Health. The district officers who gave evidence before the Joint Free Conference also complained that there has been all-round deterioration.

But all this criticism loses much of its force when it is considered that the Boards have had a very brief existence, indeed. Real rural self-government in the province dates from 1923. And the task thrown on the Boards has been stupendous. The Boards were suddenly invested with the powers that the district officer with all his staff and prestige had performed. The point was made very clear during the examination of Sir Ivo Elliott.

We quote below an extract from the verbatim report of his examination :

Question 56.—Then I suppose as long as you had the *ex officio* chairman he was in a very strong administrative position because he had got his own subordinates in the district who were always available?

Answer.—He had a large and widely-distributed revenue staff for the collection of the revenue who were available to inspect and to watch the execution of work that was nominally done for District Boards.

Question 57.—Then when the transfer takes place, of greater responsibility and to a non-official elected chairman, it seems to me offhand that the newly-constituted District Board has a very difficult task thrown on it, because it would appear to lose the services to the full extent of this well-organized official administrative body?

Answer.—That is the case, and the effect of that is seen in the difficulty, which the District Boards find in getting their work done, and in making progress."

And this was not the only difficulty. In the case of District as well as of the Municipal Boards there has been a rather injudicious relaxation of control from the head-quarters. The popular cry for "real and effective local self-government" has resulted in the Government's keeping their hands off the affairs of the Boards as far as possible. Local self-government and local responsibility are by no means inconsistent with effective survey and the occasional control or stimulus of the central authority. Not only has there been lack of control, but there has not been any attempt to advise them. The policy has been to let them learn by their difficulties; it may have some justification, but it has rendered the period of experiment least suited to an inquiry by the Statutory Commission. The members of the Commission themselves showed their appreciation of the point in the examination of Sir Ivo Elliott.

Major Attlee was pleased to suggest that the arrangements for central control had been rather chaotic, that there was no general advice and direction on the technique of Local Government at all. To these difficulties may be added the legacy of financial embarrassment that the Boards inherited from their predecessors and a feeling of communalism that was only the repercussion of the unfortunate tension prevailing outside.

Conclusion.

43. In the end we fully endorse the conclusion that the United Provinces Government have arrived at with regard to the accomplishments of the District Boards; in our opinion the same may with slight changes be said about the working of the Municipal Boards : —

> "The Boards have had to contend against great difficulties, inexperience, lack of a trained executive, wide areas, weakness of public opinion, the defective nature of the legislation under which they have been working, and lastly, and above all, the bitterness of communal feeling. In spite of these difficulties, this Government were able in reporting in 1927 on the working of the Reforms to say that the work of the Boards had on the whole been satisfactory, though still leaving much to be desired."

PART II

GENERAL OBSERVATIONS ON FUTURE ADVANCE

The case for full provincial autonomy.

44. We have so far described the working of the Reforms since their inauguration, and we trust we have adduced sufficient facts and data to enable us to conclude that this province has made the most of the Reforms and has established its claim to a further substantial instalment of them. The Legislature has shown increased responsibility, there is a marked awakening in the electorate, and the Transferred departments have under successive Ministers made remarkable progress, despite insuperable difficulties of finance and extraordinary political conditions which have prevailed in the country during the last nine years. We venture to think that for reasonableness and a real desire to work the Reforms, this province has shown itself second to none in India. The conclusion arrived at by the United Provinces Government is that "whatever has been the experience of other provinces it can be held that dyarchy has been worked in this province without an undue amount of friction and with a maintenance of a reasonable standard of efficiency in the administration." If, therefore, the granting of further Reforms is dependent on how this province has acquitted itself during the experimental period of the last nine years, it would appear to have a claim at least as good as any other province in India and a good deal better than some. We are aware that in more than one province the grant of full provincial autonomy—we shall define this term later on—is seriously under consideration, and we are clearly of opinion

that this extension of popular government is fully due in this province.

Unanmious. opinion against dyarchy.

45. In the first part of this report, we have freely used the words of the United Provinces Government to show that dyarchy is unworkable, cumbersome and illogical. This province has made the best of this awkward system for nine years, and there seems no reason why it should be saddled with it any longer when it has shown its capacity for fuller responsibility. Taking a most unbiassed and detached view of the whole situation and after giving full consideration to the claims and difficulties of various castes, creeds and communities, we have evolved our proposals which aim at establishing full provincial autonomy with immediate effect. We have provided safeguards against possibilities of breakdown in the administration and also against any chances of unfair treatment of one community by another. Our Committee is thoroughly representative of the different communities in the province whose claims deserve the most careful consideration of those who are entrusted with the task of drawing up the future Constitution. That we have reached virtual unanimity is proof positive of the fact that there has been a spirit of give and take in all our deliberations, and our decisions are the result of a compromise between the conflicting claims of Hindus, Musalmans, Depressed Classes, Anglo-Indians and Christians. All these rival communities are united in their demand for a system of provincial autonomy where there will be no reservation of subjects and where real responsibility will rest with the people. All the different communities share common sentiment and historic associations, and in spite of communal dissensions which have unfortunately disturbed the happiness of our household, we think we are a body of people united by a corporate sentiment of definite intensity, intimacy and dignity, and there is no doubt that we are related to a

definite home country. It cannot, we are confident, be argued against us that there is an absence of the feeling of nationality in us. We have got all the requisites of national unity, and we are not so short-sighted as not to know that internal and communal dissensions can only result in thwarting the progress of the country as a whole. We understand the value of unity: we know full well "united we stand, divided we fall."

Interdependence of our proposals.

46. In this connection we wish to make it clear that we regard our main proposals as vitally interdependent. As we have said above, they are the result of compromise between the rival and conflicting claims of the various interests that we severally represent; and it is for this reason that we would warn against our recommendations being considered piecemeal.

Meaning of provincial autonomy.

47. Before we proceed further, we must understand the meaning of the term "autonomy" which has been freely, though somewhat loosely, used in connection with proposals for advance in provincial governments. Autonomy has been defined "in general, freedom from external restraint, self-government." Another definition of it puts it as a "polity in which the citizens of any state manage their own Government." It is obvious that the word "autonomy" cannot be used in its absolute sense in relation to the provinces of India. In any system of provincial autonomy, equilibrium has to be established between the central power and local liberty. This brings us at once to the question of fitting the provinces into a system of federation where without predicating an equality of interest between the two parts of the constitutional equation, it is necessary to ensure a state of equipoise or contentment which may guarantee the whole system against violent disturbance from within. There is no doubt that the steps we are called upon to take in the solution of the Indian constitutional

problem, will bring us face to face with some of those very questions which the makers of federal Constitutions in Germany, in Switzerland, in the British Dominions and in the United States of America, had to answer. So far as India is concerned, we are fortunate in being able to approach our task with a Central Government already firmly established, which we regard as a piece of good fortune because we have the important nucleus around which to build our Constitution. The present situation requires rather the liberation of the provinces from central control than the protection of the central authority from provincial encroachments. Whatever meaning may be given to the term provincial autonomy, it is idle to expect that the provinces will be entirely free of external control by the Government of India. It is obvious that there can be no provincial autonomy without free or self-governing institutions. It is for this reason that in the fifth paragraph of the Preamble to the Government of India Act, the following words occur: "and whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to these provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities." The important implication of the above Preamble is that the release of the provinces from the control of the Government of India is to proceed concurrently with the development of self-governing institutions in the provinces. Federal Constitutions vary in character and display in their variety the results of the strength between the centripetal and the centrifugal forces. The United States of America and the Australian Commonwealth are examples of the centrifugal type of federations, Canada being illustrative of the centripetal type. In the United States of America, which is perhaps the oldest model of

a federal Constitution, the component states were in existence long before the union took place. The Constitution in the United States explicitly assigns to the central authority only those powers and duties which must be deemed common to the whole nation, the residue of power being left in the hands of the states composing the Union. The Australian and Swiss Constitutions are of a similar character. In all these Constitutions the powers of the Central Government are limited and the balance of power vests in the component states. It is important to note that in all these countries strong and organized governments, independent of any central authority, were in existence in the component states before these latter decided to unite themselves into a federation. The case of Canada may be called the constitutional antithesis of that of the countries just described. In all those countries the Central Government possesses only such powers as have been expressly assigned to it—everything else being left to the states—, but the reverse is the case with Canada. The Constitution of Canada expressly provides that all residuary powers vest in the Canadian Parliament and not in the provinces. It is apparent that the future Constitution of India is going to partake of a similar character. Unlike the United States, where each state had original and inherent powers which belonged to it before it entered the Union, and where consequently each state is supposed to possess *prima facie* unlimited powers unless any can be shown to have been taken away by the federal Constitution, the type of Government which would come into being in India would be such as to give to the Central Government supreme authority over the provinces except where the Constitution assigns the subjects to them. Thus any provincial autonomy which we may seek to establish, would be subject to such control by the Central Government as may be prescribed. We do not

state that the line which is to divide matters of common concern to the whole federation from matters of local concern will be absolutely clear. Nor do we imply that in the future Constitution of India the provinces will not have full liberty of action within the scope expressly assigned to them, but we do say that anything outside this expressly assigned scope must belong to the Central Government. The establishment of full provincial autonomy connotes the relaxation of the powers of superintendence possessed by the Government of India and the Secretary of State so as to leave the provinces their own masters in regard to the subjects entrusted to them in their respective territories. For our purposes we have not assumed what definite form the future Government of India is going to take, although we have kept in front of us the probability of the national government of the country being placed on an equal footing with the other Dominions at no distant date. Whatever powers are at present possessed by the Secretary of State would, on the attainment of Dominion status, be transferred to the Central Government. The system of provincial autonomy recommended would leave the present relation between the Central and Provincial Governments untouched except that the former's powers of intervention will be substantially circumscribed. The change of real importance that will take place will be that such provincial subjects, as are at present 'reserved', will be transferred to the control of the Provincial Legislatures. We are alive to the fact that the proposed change would involve a more complete separation of finances between the Central and the Provincial Governments and would necessitate the drawing of a clearer demarcating line in taxation and legislation. Similarly, definite provision would be necessary to provide for the enforcement of the authority of the Central Government over the Provincial Governments. Again, the question of the borrowing

powers of the provinces would have to be gone into and a method devised whereby the Central and Provincial Governments, which tap the same source when they go into the money market, do not compete with each other in interest rates. Lastly, there is the important question of the classification of subjects into Central and Provincial. All such matters will have to be carefully adjusted and provided for.

OBJECTIONS TO THE GRANT OF PROVINCIAL AUTONOMY

48. The immediate grant of full autonomy to provinces has been resisted on several grounds. The most formidable argument which has been advanced against the granting of provincial autonomy to this province is based on the prevalence of communal tension. Indeed, according to the minute attached to the Local Government's Memorandum by the Hon'ble Nawab Sir Ahmad Sa'id Khan, K.C.I.E., Home Member, it is very clear that the prevalence of communal tension is the only reason why he does not advocate the transfer of all departments to the control of the Legislative Council at this stage. Nawab Sir Ahmad Sa'id Khan has very candidly stated that he has always been of opinion, and is still of opinion, that "in these provinces we have given sufficient proof of the fact that we can be trusted with responsibility to run the machinery of government." He has admitted that he made it clear in the note which he, as a Minister, submitted to the Muddiman Committee in 1924, that full provincial autonomy with certain safeguards could be given to these provinces. He has equally frankly admitted that if he has now been compelled to "agree with great reluctance" to the continuance of what he calls the "cumbrous and awkward system of dyarchy", it is only

[A] Communal tension.

because there has been marked deterioration in communal feelings in these provinces. We cannot help appreciating the candour and the weight of this pronouncement, knowing, as we do, that the Nawab is perhaps the most successful Indian administrator of recent times which this province has produced. The Nawab Sahib himself has had experience as a non-official member in the Reformed Council, and since 1923 has been a respected member of Government, for the first three years as a Minister and subsequently for the last three years as a member of the Governor's Executive Council. In the last-named capacity, he has been in charge of the Police, Judicial and Jail departments, which go to make up the subject of "Law and Order". It is in regard to the transfer of this subject that so many conflicting opinions are held. It is interesting to note that the Nawab Sahib's recommendation to defer the transfer of certain departments makes it clear that statutory provision should be made now to enable the Government of India to review after five years the question of transferring the remaining departments to the control of the Legislature. He regards the communal tension as a passing phase and is very sure that a change in feeling between the two communities will soon come about. We are equally hopeful, but we differ from the Nawab Sahib inasmuch as we feel that even though communal tension may be the stumbling block in our way at present, yet it does not constitute sufficient reason for withholding from the province an advance which it has earned and for which it has otherwise shown its fitness. The minority and backward communities should, of course, be provided with safeguards so that their rights are not trampled upon by the majority communities. This would, in our opinion, remove the existing communal tension and will make the various communities realize that they have to work together for the common good, and that their

salvation lies in team work. At present there is no real objective before the different important communities: there is nothing that they can collectively work for. The present cleavage along communal lines is due very largely to the fact that in the expected Reforms each community is out to get for itself the most it can. Human nature being what it is, the majority community wants to have all the power in its own hands which naturally makes the minority community feel uneasy. Likewise, the minority community probably thinks that now is the chance for it to drive a hard bargain, because it knows that the constitutional problem cannot be solved without its co-operation. We must not be taken to mean that there is not a large and influential section of either community which has taken a larger view of things and has risen above petty considerations of this character. If it can be shown that things have gone so far that every community in the country thinks in terms of itself alone, then the future would be gloomy indeed. There are hundreds and thousands of Hindus and Muslims who still live together in peace and with the friendliest of relations subsisting between them. They are proud to be Indians and would not let the fair name of the motherland be soiled. If proof were needed of this amity of relations between the two important communities, it would be forthcoming in no small measure in foreign countries and colonies where both the communities are living together as brothers and sisters. We do not hear of communal dissensions in those places, and Hindus and Musalmans are both shoulder to shoulder in the many pioneer ventures which they have undertaken in those countries. We cannot resist the conclusion that the present communal differences in the home country are similar to the differences which are known to arise amongst brothers when there is a question of the division of a testamentary property left by a father or other relation.

Once the partition of the property is completed, the brothers take no time in making up their differences and share the paternal home without any discord. The system of government we have recommended will have in it such safeguards as will automatically prevent one community riding rough shod over another. We consider that this assurance is necessary, as it will be the surest means of removing the present discord which is born of uncertainty and suspicion as to the future. For instance, if it is made clear that the executive of a Provincial Government will consist of Ministers drawn from both the communities which at present harbour distrust for each other and if the principle of joint responsibility is made incumbent it is not likely that the Hindu members of the Ministry would, or could, ignore their Muhammadan colleagues, and accordingly the Ministry as a whole would be bound to take decisions which would not injure the legitimate rights of the Muslim minority community. Likewise no party in the Council can afford to ignore the Muslim *bloc* which would be of sufficient strength to make its presence felt. If we analyse carefully the fears expressed in some quarters in regard to minorities suffering under a system of full responsible Government we would very soon discover that there is no real basis for them. To take one example, we have heard it said that a Hindu Minister in charge of Law and Order may act communally and may after a communal riot refuse to order the prosecution of his fellow-religionists, or may withdraw cases already instituted against them by the district authorities. We consider that under the scheme recommended by us no Minister can show such flagrant disregard for justice and fair play—the Cabinet will include representatives of both communities, and a Hindu Minister must act jointly with his Muslim colleagues if the Cabinet is to govern as a whole. To our mind it would be impossible for either a Hindu or a

Muslim Minister to ignore what is just and right for both the communities if the Ministry is to work in concord under a system of joint responsibility.

49. We recognize the need for such safeguards as will prevent the minority communities being unfairly treated. The demand for full provincial autonomy is endorsed by all the signatories to this report but one, of whom three are Hindus including one member of the Depressed Classes, two leading Musalmans, and one Anglo-Indian. The two Muslim members, however, want to make it clear that, as a condition precedent to the grant of provincial autonomy, certain rights and privileges must be safeguarded to their community. Safeguards for Muslims.

They ask for the following :—

(1) Thirty-three per cent. representation in the Cabinet.

(2) Representation in both houses of the Legislature to be 30 per cent. of the members returned from elected constituencies, and; where the Governor has the power to do so, 30 per cent. of nominations to be confined to Muslims.

(3) Separate electorates for the Legislature according to the Congress-League Pact of 1916 as accepted in the existing constitution.

(4) Separate electorates for local bodies as existing at present.

(5) Effective representation in all autonomous bodies created and controlled by the Legislature, for example, the University and the Board of Intermediate Education.

(6) Representation in all services maintained by the Government to the extent of 33 per cent. and those maintained by local and other autonomous bodies in proportion to their representation in those bodies.

(7) Provision to ensure to the Muhammadans adequate share in grants-in-aid given by the State and the self-governing bodies.

(8) Guarantees for the protection and promotion of the Urdu language, Muslim education and culture, religion, personal laws and charitable institutions.

(9) A provision that no bill or resolution or any part thereof shall be passed in any Legislature or any other elected body if three-fourths of the Muslim members of that particular body oppose such bill or resolution or any part thereof on the ground that it affects the interests particularly of the Muslim community; the question whether the matter is communal will be decided by the president of that body, against whose decision an appeal shall lie to the Governor.

Discussion of these safeguards : (a) Extent of Muslim representation.

50. We have given our best consideration to these safeguards, and we are in general agreement with the principles underlying them. So far as the weighted representation in the Legislature and the Cabinet is concerned, we consider that in the present state of affairs it must undoubtedly be guaranteed to the Muslim community. The extent of weighted representation in the Legislature which we recommend is the same as was contained in the Congress-League Pact of 1916 and is found embodied in the existing Constitution; we think that under the present circumstances it should not be disturbed.

We agree that in making such nominations as are within the Governor's unfettered prerogative he should be charged with the instruction that Muslims should get their proper share of these nominations.

(b) Separate electorates.

51. The problem of separate electorates has been the subject of more controversy than any other. We feel, and the feeling is fully shared by the authors of the Memorandum of the Musalmans of the United Provinces, that the system of separate electorates is not an ideal one. On page 5 of their Memorandum they state :—

> "There is thus no alternative for the Muslims in the present state of the country except to insist on separate electorates and separate representation of the Muslims, much indeed as is their desire that it should be done away with soon."

We agree, therefore, that as long as the present estrangement between the two communities exists, they seem to be an unavoidable necessity. Insistence on the part of Hindus to abolish these separate electorates, forthwith unfortunately widens the gulf between the two communities and makes the Muslims feel more suspicious and distrustful. The Hindu signatories to this report are sure that a time will come when their Muslim compatriots will themselves want the abolition of separate electorates. They would, therefore, leave it to the Muslims themselves to come in the fullness of time and say that they have no longer any reason to doubt the *bona fides* of their Hindu fellow-countrymen, and so they would merge their political entity into one common whole. The suggestion, therefore, is that separate electorates should be allowed for the present, but it should be open to the minority communities for whose benefit

separate electorates have been instituted to decide at any time that they should give place to joint electorates. This will be one of the provisions of the Constitution which should be capable of amendment by the Provincial Legislature itself provided a three-fourths majority of the community concerned agrees to the change. We have discussed the question of amendment of the Constitution in detail in paragraphs 82—93. We agree on the same grounds that Muslim representation should be through separate electorates in local bodies, though we think that it is not within the purview of the present constitutional inquiry to make suggestions for the local bodies which are a matter for the Legislatures creating them.

(c) Safeguards nos. (5), (7), (8) and (9).

52. We agree that the Muslims should be effectively represented in all autonomous bodies created and controlled by the Legislature, for example, the University and the Board of Intermediate Education. This can best be achieved by giving the Governor the power to intervene if the Legislature fails to provide such representation. Safeguards numbered (7) and (8) with regard to grants-in-aid, the Urdu language, Muslim education and culture, religion, personal laws and charitable institutions, are such as no one can take any objection to. Such safeguards are the normal features of most modern constitutions of the world. Safeguard numbered (9) is one on which Muslims have laid considerable emphasis, although the learned authors of the Montford Report did not find it possible to accept it. We appreciate the difficulties of working such a provision, but we suggest that the matter should be further investigated with a view to finding a satisfactory solution. We are cognizant of the difficulty which will present itself when a decision is asked for as to whether a certain matter affects solely and particularly the interests of the Muslim community or not, but we think that firstly, the President of the

Legislature, and lastly, the Governor, may safely be trusted to give an unbiassed and impartial ruling which will be acceptable to all.

(d) Muslim representation in services.

53. In regard to services we accept the principle that members of all communities should have their full share of appointments and we think that the purpose can best be served by charging the Governor with the fundamental duty of seeing to it that no one community unduly preponderates over others in the matter of services. In his speech at Calcutta in December, 1926, Lord Irwin dealt at length with the claims of the Muhammadan community to representation in the services. He laid down that the claim of the community should be met by reservation of a certain proportion of appointments to redress communal inequalities and in the case of appointments filled by competition by the maintenance of separate lists of Hindu and Muhammadan candidates. He pointed out also that it was not possible to attempt a strictly proportionate representation of communities in the public services and that the general policy of the Government was directed not so much to securing any precise degree of representation as to avoiding the preponderance of any particular community. We are in complete agreement with this view and we consider that the Provincial Public Services Commission, which we have recommended, should be charged with instructions accordingly. Whilst realizing that it is impracticable for a definite communal proportion to be maintained in all services, we agree with our Muslim colleagues that, as far as possible, one-third of the appointments in the Government services should be given to Muhammadans.

With regard to the safeguards as a whole proposed by our Muslim colleagues it is generally understood that only the principles underlying them can be incorporated in

the Statute, it being impossible to lay down hard and fast details on such matters in the Constitution itself.

Safeguards for the Depressed and Backward classes.

54. Our colleague Babu Rama Charana, who represents the Depressed and Backward classes, has asked for certain safeguards for those classes :—

(1) Adequate representation of the Depressed and Backward classes in the Legislature.

For the present he has agreed to 15 seats being reserved in the Lower House out of a total strength of 182 and 5 out of a total strength of 60 in the Upper House. He is agreeable to both these sets of seats being filled by nomination. This arrangement is to continue for ten years during which time it is hoped that the Depressed and Backward classes will have sufficiently advanced so that their members will be returned in adequate numbers through the general non-Muslim constituencies. It is also hoped that it will be possible to further extend the franchise within this period of ten years in which case the Depressed and Backward classes will preponderate in the electorate. Babu Rama Charana would like to make it clear, and we appreciate the fact, that he has accepted the system of nominations as only a temporary expedient which should be reconsidered at the end of ten years. If on the expiry of this period it is found that the Depressed and Backward classes are unable to secure adequate representation through the general non-Muslim constituencies, the Legislature, and failing it, the Governor should be empowered to create special constituencies for the exclusive benefit of those classes, the seats so reserved being filled by election by separate or joint electorates as may be decided.

(2) Fair representation of the Depressed and Backward classes in the Cabinet.

The Governor will naturally try to avoid communal inequalities in selecting his Ministers and we would leave

this matter to his good sense. We do not wish to fetter his discretion as we realize that the formation of a stable Ministry under the new Constitution will not be an easy matter, and we do not wish to unduly increase the difficulties. We would be quite content if amongst other factors which the Governor and the Chief Minister take into account in selecting Ministers is the question of adequate representation of all classes and communities.

(3) Representation in the local bodies by nomination to the extent of 8 per cent. of the total strength of those bodies. The power of nomination should be vested in the Governor instead of the Government as at present. This system of nomination will be subject to reconsideration in the same manner as described under (1).

We are in sympathy with the desire of the Depressed and Backward classes to have a share in the local self-governing bodies, but as already stated elsewhere, the Constitution can hardly interfere with details of matters which are the special concern of the Legislatures, and the best safeguard which can be improvised is that the Governor should be charged with the duty of preventing communal inequalities in such matters, and accordingly the power to make nominations to redress such inequalities should vest in the Governor.

(4) Effective representation in all autonomous bodies created by the Legislature, *e.g.*, the Universities and the Board of Intermediate Education.

We have given the Governor the power to secure the impartial treatment and protection of the diverse interests of, or arising from, race, religion and social condition; the Governor will naturally use his powers in cases of all hardship, and the claims of the Depressed and Backward classes should receive his special consideration.

(5) Adequate and effective representation in all public services under the Government and the local self-governing bodies.

We agree that the Depressed and Backward classes deserve encouragement and we have no objection to the Public Services Commission being instructed to bear the claims of these classes in mind when making appointments, and we recommend accordingly.

(6) Special facilities regarding education together with adequate share of public grants-in-aid.

We attach the greatest importance to this demand. The Depressed and Backward classes as defined by our colleague Babu Rama Charana constitute a majority of the population of the province. Once they are educated, and once the franchise is sufficiently widened, they will not stand in need of any safeguards at all. They would by virtue of their numbers control the Legislature and thereby the Government of the province. The best, therefore, we can do for them is to hasten that day. We are also convinced that as advancement and education proceed the present classification of the Depressed and Backward classes will change. A great many castes which may at present be included within the definition of "Backward" classes would, once they are high up in the social and educational ladder, refuse to be so defined and would probably resent to be relegated to that category. We, therefore, recommend that special facilities should be provided regarding the education of the Depressed and Backward classes. The greatest difficulty in considering the claims of the Depressed and Backward classes is the fact that a classification, acceptable to all and one which would hold good for all times, has yet to be agreed upon. It is impossible for a third party to definitely label a caste as

Depressed or Backward. No caste can be prevented from raising its head and saying that it considers itself entitled to be included amongst the higher classes. There is a distinct tendency towards such uplift, cases in point being those of Kurmis, Kahars and Chamars, who have already partly established their claims to be included in certain higher castes. The question naturally arises, can the Constitution relegate a person against his will to a category which he dislikes? The solution of the problem, therefore, is to accelerate the uplift of the existing backward classes so as to enable them to take up their proper position in the Hindu society of which they are an integral part. Association on a footing of equality and not dissociation is the remedy.

Safeguards for the Anglo-Indians and Domiciled Europeans.

55. Mr. H. C. Desanges suggests the following safeguards for the Anglo-Indian and Domiciled European community :—

(*a*) A decent representation in the Legislatures by separate electorate.

(*b*) Maintenance at the present figure of the appointments held by Anglo-Indians in the Railway, Customs, Posts and Telegraphs, and the I. M. D. services.

(*c*) Maintenance at the present figure at least of the educational grants to Anglo-Indians and Europeans.

We have made provision for (*a*) in our scheme of composition of the two houses of the Provincial Legislature. In regard to (*b*) we agree to the principle. We, however, realize that these services are under the direct control of the Government of India, and as such the matter has no bearing on our proposals and is not germane to the scope of our inquiry. About (*c*) we have

recommended that Anglo-Indian and European education should be made a central subject.

[B] Lack of party system.

56. An extension of responsible government in this country is often opposed on the ground that so far the country has not shown its aptitude for parliamentary government inasmuch as political parties are non-existent. In the first portion of our report, we have stated, on the authority of the United Provinces Government, that the Swaraj Party and perhaps also another opposition party have shown a good deal of cohesion and powers of organization. We feel that at present it is impossible for parties other than those which range themselves on the side of the opposition to exist. The chief motive at present for the formation of parties is the wresting of control of the government from the bureaucracy and transferring it to the people. It must be admitted that the fight of any popular party against bureaucratic government in power armed with inexhaustable resources is a fight against great odds, and does not constitute a strong enough motive for keeping together a large political organization. There is an entire absence of motive for the formation of a party which would support the government. The history of the development of parties in England shows that it was after the introduction of responsible government that the party system developed itself to an appreciable extent. It is a well-known truism that the formation of parties must follow the introduction of responsibility and cannot precede it. It is only after the transfer of power and responsibility to the Legislature that one can expect important cleavages of principle to develop themselves and a struggle for power and office between two rival sets of members of the Legislature. So far as our province is concerned we have not had even the principle of joint-responsibility in the executive of the Transferred side of the Government. Unless

the Cabinet is worked on a principle of joint responsibility it is impossible to have even the semblance of a party system in the Legislature. The presence of the official *bloc* has been another obstacle to the growth of the party system. Speaking of our own province we are very optimistic that suitable party organizations will come into being as soon as responsibility is granted. We do not visualise very unstable Ministries, as we are sure that the elements which will constitute our provincial Legislature will show the necessary spirit of responsibility and support, and oppose Ministries on principles rather than on personal considerations.

[C] Backwardness of the Electorate.

57. Another formidable objection that has been taken to the grant of full provincial autonomy is that with an electorate consisting of 4 per cent. of the population parliamentary government would become oligarchical in character. "And," it is urged, "there is among the masses of the people no such citizen-sense as to afford any hope that they would unite to resist a determined attack on the Constitution in the way in which, for example, the people of Britain united in May, 1926." The analogy of England before 1832 is dismissed on the ground that, although there was a very small electorate, there was behind the Constitution a body that was not only ready but also able to support it against any attack. The illiteracy of the electorate is also urged as an argument against full transfer of power. In our opinion, however, the establishment of full responsible government in the provinces cannot be made to wait till the people have become literate. Backwardness of education did not act as an impediment to the introduction of responsible government in Canada or in any other Dominion. Neither is it an incontrovertible fact that elementary education by itself makes a person a better citizen. The Hon'ble Mr. G. B. Lambert himself admitted in his

examination *in camera* that "an illiterate voter did not necessarily possess less citizen-sense than a literate voter and was as capable of knowing his own interests." It might even be stated that in India the average citizen without any educational qualification is more capable of exercising the vote than a person with a smattering of education. After all, the main functions of the voters are to choose right men as their representatives and to understand broad issues of policy. It is admitted that the Indian is not unfit to discharge these two functions properly. Every villager knows what benefit the Agra Tenancy Act of 1926 has brought to him. Even in countries where the standard of literacy is much higher the electors do not select the best men. As for party programmes it has been said by an able politician that "there is a great deal to be said for the voter who puts his trust in the character and respectability of a candidate rather than in specious election promises which cannot be or are not intended to be fulfilled." The charge that we are setting up an oligarchic Constitution is easily met by pointing out that an electorate consisting of about four million voters, which the extended franchise recommended by us will in our estimate yield, cannot be called oligarchic or undemocratic. And it must be remembered that this electorate is composed of a large variety of classes and interests; it will comprise almost all the tenants who have any status worth the name and it will include labourers who pay Rs. 3 as monthly rent. The proposed literary qualification will also bring in a new leaven of interest. We are of the opinion, therefore, that an electorate such as this coupled with the Press which, as admitted by the Government, already wields an appreciable influence over the people, is a sufficient guarantee of the constitution being run on true democratic lines. We are not prepared to believe that even to-day the elector does not understand his true interests,

and we feel strongly that once he knows that it is in his own hands to make or mar himself, he will not use the power of the vote except in a sane and rational manner. It is hardly fair to judge the Indian elector by his past sins of omission and commission. The chance given to him to show his capacity has been replete with difficulties arising out of the defective nature of the Constitution which was given him to work, and we doubt whether a much more enlightened elector would have fared a great deal better in these circumstances.

Consideration of the United Provinces Government's scheme.

58. Before we discuss our proposals, we would like to say a few words in regard to the scheme which has commended itself to the United Provinces Government or, more correctly, the members of the Executive Council of the province. The United Provinces Government have been obliged to reject full responsible government in the province for which they consider time is not ripe yet, and they have recommended the continuance of dyarchy. The principal arguments which have been advanced against the grant of full responsibility are :—

(1) Absence of well-defined parties;

(2) inclination on the part of the Legislature to interfere in executive functions; and

(3) absence of an enlightened electorate to defend the Constitution against any attack.

We are not prepared to dispute the force of these arguments, but we would only like to say what we have already said that political education cannot proceed in an atmosphere of irresponsibility. The last nine years of the working of Reforms have shown that we have made considerable progress in developing political sense, which is the one remedy for the ills with which we are described to suffer at present. The United Provinces Government have been obviously hard put to it to find a solution. They have examined a number of schemes

which they have rejected as being impracticable or unsuitable. They have fallen back on a scheme which, we are inclined to think, they would not themselves regard as an ideal one. We must not be understood to say that they have not made an honest and real effort to solve the conundrum with which they found themselves confronted. The fact of the matter is that there is no half-way house between full responsibility and irresponsibility. Dyarchy has been condemned in every quarter, and the United Provinces Government have themselves quite frankly admitted the defects of the existing system. Their scheme is nothing but dyarchy in which the important subjects of police, justice, land revenue and jails would be reserved. They propose extending the field of responsibility by the transfer of further subjects and by making the responsibility more real by the more careful definition of the Governor's powers of intervention, by changes in the position occupied by the Finance Department, and by the removal of the official *bloc* from the Lower House. They also recommend the institution of a Second Chamber consisting of 60 members of whom 35 would be elected and 25 nominated. They would circumscribe the Governor's powers to overrule his Ministers, and they would transfer the official *bloc* to the Upper House. The Lower House would have all the functions of the present Legislature, but its powers in the matter of legislation would be shared by the Upper House. The Upper House would have the power of restoring any demands pertaining to the reserved subjects which have been thrown out by the Lower House, or, in the alternative, it is suggested that the Upper House should have the sole right to vote demands for the Reserved subjects. In other words, as the authors of the scheme put it, these proposals would give the Lower House the same powers as at present but would give the Upper House an opportunity of amending decisions which the Governor in Council found him-

self unable to accept. In addition, the Governor is to have powers of certification in respect of the Reserved subjects. The Ministers would be responsible wholly to the Lower House, where they would not have the support of an official *bloc* as at present. The one real advantage from the popular point of view of the scheme is that in respect of Transferred subjects the responsibility will be more real than at present, but to our mind the great defect of the scheme is that it will tend to separate the two parts of Government into water-tight compartments, the Transferred half having nothing in common with the Reserved half. It seems very difficult, if not totally impossible, to separate the departments of Government into parts wholly independent of one another. The activities of Government in the various departments overlap to such a large extent that the handing over of only one side of it almost entirely to popular control can only result in deadlocks which will be very difficult to remove. It is for this reason that the Ministers have opposed two important features of the United Provinces Government's scheme, namely, the removal of the official *bloc* from the Lower House and the creation of a Second Chamber. If the scheme is divested of these two features, then to our mind it not only loses all its attraction but also becomes unworkable. The position of the Ministers under such a scheme will become anomalous in the extreme. In the matter of legislation the Second Chamber is to have equal powers with the First. This will amount to substantial curtailment of the existing powers of the popular House in regard to legislation. Quite apart from this, the scheme does not provide for any machinery for the removal of deadlocks. For instance, if a certain legislation pertaining to Transferred departments is passed by the Lower House the Minister responsible for that legislation may find himself in a very difficult position if the Second Chamber, or even a joint session of the two

chambers, rejects it. The Second Chamber will have a considerable nominated and official element, and yet it will have the power to force the hands of the Minister. Under such circumstances, he will find it very difficult to justify his position in the Lower House. Taking an unbiassed view of the whole situation, we feel constrained to say that the scheme suggested by the United Provinces Government, though it is not devoid of certain merits, will not be the solution of our difficulties; nor will it result in a logical system of Government.

PART III.

RECOMMENDATIONS.

Outlines of our scheme.

59. We have examined the working of the existing system of dyarchy and the case for further reforms, and, after a careful consideration of the more important objections to advance that have been raised and of the scheme that the United Provinces Government after itself rejecting a number of other schemes has proposed, we have deliberately come to the conclusion that nothing short of provincial autonomy will satisfy the needs of these provinces. Our own scheme is based on a full recognition of the various difficulties and apprehensions that have been troubling the minds of those who have attempted to frame constitutional proposals for these provinces, and it will be seen that it is not a perfect, unalloyed system of complete provincial autonomy conceived in an academic spirit. We have already said that the Indian Constitution will be based more or less after the Canadian model, wherein the Central Government will have all residuary powers and substantial powers of supervision and control over the local governments. In our scheme the Governor will retain substantial powers of interference and control. In order to reach the goal we have in view he will be expected gradually to assume the rôle of the constitutional head of the province and refrain from using the emergency powers which we are investing him with. The sole idea of these powers is to help to tide over the initial transitional stages. We are almost certain that, as the people advance politically, the Governor will not be called upon to exercise these powers, which will be

automatically reduced. The Executive will consist of the Governor and a Cabinet of, say, six jointly responsible Ministers who will be selected with due regard to the claims for representation of the minorities. The Ministers may belong to either House of the Legislature —we are proposing a bicameral one—but they will be responsible to the Lower. For the stability of the Ministry we are recommending that, except at budget time, the Ministers should be removable on the vote of not less than an absolute majority of the House. The Legislature should consist of a Lower House of 182 members and an Upper House of 60 or 50 in accordance with our two schemes. In all legislation both the houses should have equal powers, deadlocks to be removed by joint sessions; in regard to the finance bill we would give certain powers to the Upper House, which would enable it to require the summoning of a joint session to vote on important "substantial" cuts. We have been able to recommend a widening of the existing franchise by lowering the property and rent qualifications which obtain at present and by introducing an independent educational qualification. We have had to reject adult franchise as being impracticable at present. This is our scheme in broad outline. It provides for adequate safeguards and reduces the risks of a "sudden plunge into the unknown" to a minimum; and at the same time it postulates the minimum degree of constitutional advance that will satisfy the aspirations of the people.

Powers of the Governor— (a) In the administrative sphere.

60. As we have stated above, the present political conditions demand that when full parliamentary government is introduced in the provinces the Governor should have certain emergency powers in the spheres of administration, legislation, and finance. These will, more or less, be the same as at present; but in the administrative sphere his powers of intervention will naturally

have to be closely circumscribed. It is difficult to lay down precisely the matters in which he may intervene. We would only say that we are in general agreement with the list of such matters given in the sixth scheme examined by the United Provinces Government on page 25 of volume III of their Memorandum. These matters are :—

(1) Maintenance of the safety and tranquillity of the province and prevention of religious or racial conflict;

(2) the advancement and welfare of backward classes and a fair and equitable provision of educational facilities to them as well as to other minorities;

(3) the impartial treatment and protection of the diverse interests of or arising from race, religion, social condition, wealth or any other circumstance, and specially the securing of adequate representation of the various communities in the administrative services;

(4) protection of the public services (we have recommended that an appeal should lie to the Governor from decisions of the Public Services Commission in disciplinary proceedings against government servants);

(5) prevention of monopolies or special privileges against the common interest and of unfair discrimination in matters affecting commercial or industrial interests; and

(6) maintenance of financial stability and adherence to canons of financial propriety.

He will, as in the Dominions, appoint the Chief Minister, and, on his advice, the other Ministers. In

extreme cases of a breakdown of the Ministry he should have the power to take over the administration for a certain period. In matters which assume an All-India character and are not confined to one province the Governor, it is understood, will carry out the instructions of the Central Government, specially in matters affecting law and order.

The same : (b) In the sphere of legislation.

61. In the Legislative sphere he should retain the following powers :—

(1) To give or withhold his assent to a bill passed by the Legislature;

(2) to reserve it for the consideration of the Governor-General;

(3) to return it for the reconsideration of the Legislature with his own recommendations, if any.

It seems unnecessary to give the Governor the power to certify legislation similar to that at present vested in him under section 72-E of the Government of India Act of 1919. There are several grounds for our not giving him this power. (1) We have provided for a fairly conservative Second Chamber which can initiate Legislation and pass it conjointly with the First Chamber. It is not likely that any really necessary legislation will fail to secure passage with the help of the Second Chamber. (2) Certification of legislation by the Governor places him in a position of great difficulty and makes him unnecessarily unpopular. (3) So far as we can visualize, all legislation essential for the safety and tranquillity of the province will be the concern of the Central Government—no such emergent legislation has to be enacted by the Provincial Governments. In the financial field we do not likewise see the need for any emergent legislation to be passed by the Governor's affirmative power of certification.

Besides the above mentioned emergency powers, he will have the following general powers :—

(1) To summon, prorogue, or dissolve either House of the Legislature, and to call their joint session either at his own pleasure or at the instance of the Upper House;

(2) to address either House of the Legislature and to require for that purpose the attendance of the members;

(3) to appoint the chairmen of the first meetings of the newly-constituted Houses of the Legislature for the purpose of electing their Presidents;

(4) to appoint the time and place of the meetings of the Legislature; and

(5) to nominate members to the local bodies and to the Legislature to represent the Depressed and Backward classes and other interests which in our scheme of the composition of the Legislature are to be represented by nomination.

With regard to the exercise of some of these powers the Instrument of Instructions should contain general directions qualifying the discretion of the Governor. For example, it should be laid down that in summoning, proroguing, or dissolving the Legislature he should ordinarily be guided by the advice of the Ministry. The idea is that if the Ministry choose to make an appeal to the people the Governor should not stand in their way; this is a generally recognized right of ministries in the parliamentary system of government. But the Governor's power of dissolution should not be confined to occasions when the Ministry desires it. To take another instance, in making nominations he should consider the recommendations or suggestions of recognized

bodies or associations of the classes or interests which are to be represented: this provision is very important as it removes from the system of nomination one of its chief defects.

(c) Financial safeguards.

62. The Governor should have the power to authorize expenditure necessary for the "safety and tranquillity" of the province. Some expenditure will have to be set apart as non-votable Permanent Charges on the lines of the Consolidated Fund in England. These charges will include interest and sinking fund charges, expenditure prescribed by or under any law, and the salaries, pensions and allowances of certain persons (such as judges of the High Court and members of the All-India Services holding posts at the time of the introduction of the new Constitution). There is some difficulty as to how items of expenditure are to be included in the Permanent Charges. Generally speaking, we think that they should be embodied in a statute passed by the Central Legislature after the local Legislature's opinion has been ascertained on it. We are definitely against the continuance of the power in regard to finance in the Secretary of State.

The above list of the powers of the Governor may at first sight appear to be very large, but it is obvious that no Governor will exercise them unless he has real grounds for doing so. Even under the present dyarchic system in the course of nine years, the Governor did not even once use his power of certification of bills and only twice certified expenditure. On the other hand, it must be recognized that the Constitution must contain provisions for every contingency.

The Ministry.

63. The question of the selection of the Ministry has engaged the careful attention of our Committee. Several alternative methods of doing this were minutely examined, and we have come to the deliberate conclusion

that the best method is that in which the Chief Minister is selected by the Governor, and the other Ministers also are appointed by the Governor, but on the advice of the Chief Minister. This arrangement conforms to the traditional system of cabinet government of the British type, and we have thought it best to adhere to it. We feel that six Ministers would be sufficient to carry on the government of our province. We have already said that we would like the proper proportion of communal representation to be maintained in the Ministry. The Ministers may belong to either House of the Legislature. We would do away with the existing restriction under which a nominated member representing a particular interest or community is ineligible for a ministership. We would also suggest that a Minister who is a member of one House should be represented in the other House by a Parliamentary Under-Secretary.

Relation of the Ministry to the Legislature.

64. The Legislature will continue to exercise its control over Ministers in the different ways which are open to it at present, namely :—

(1) by refusing supplies;
(2) by reducing their salaries;
(3) by motions questioning a Minister's policy in a particular matter;
(4) by motions of no-confidence;
(5) by motions of adjournments; and
(6) by resolutions.

We have given very serious consideration to the question of giving some degree of stability to the Ministry against any possible irresponsibility of the Legislature. It is a commonplace that the British system of cabinet government works best when there are two parties and not when there are a number of groups in the Legislature. We have already alluded to the fact that with one or two exceptions the organisation of

parties in this country is not very far advanced, and it seems certain that for some time to come, at any rate, there will be more than two parties in the Legislature. The example of France, where the Legislature is dominated by a number of groups, has not been without its object lesson to us, and we have been alive to the necessity of making some provision whereby too frequent changes in the Ministry would be guarded against. At the same time we realize that any artificial support given to the Ministry would militate against the fundamental principle of popular control which we have taken as the basis of the future government of the province. After judging the *pros* and *cons* of the whole question we have come to the conclusion that the Ministry should be removable by an absolute majority of the Lower House instead of by an ordinary majority present at any meeting. This would amount to a substantial safeguard against frequent falls of the Ministry. For example, if the Lower House is composed of 182 members, control by methods (4) to (6) enumerated above would only be effective if at least 92 members vote against the Ministry. This protection would not be available in the case of methods (1), (2) and (3).

We realize that in the matter of voting of supplies or making cuts in the Ministers' salaries or other cuts moved by way of censure, it will not be practicable to insist on an absolute majority. The Legislature can take these steps only during the Budget Session, and it seems essential that the Ministry should at least during the Budget session be prepared to abide by the verdict of a simple majority of the Legislature. During the Budget session attendance is usually full, and so there will not ordinarily be a great difference between an absolute majority and an ordinary majority at the meetings during that session. During the rest of the year a motion of no-confidence or a resolution disapproving of

the policy of the Ministry could be passed only by an absolute majority, and we feel that that would constitute a sufficient safeguard against the dangers of "snap divisions." The Committee is averse to giving the Governor wide arbitrary powers for retaining a Ministry against the will of the Legislature. The Governor's remedy would lie in dissolving the Legislature in case of repeated falls of the Ministry. This is the constitutional method followed in other countries, and we see no reason why there should be any other provision in our province.

The Legislature.

65. We are unanimously of the opinion that in a system of full provincial autonomy a bicameral Legislature is essential. A Second Chamber based on a restricted franchise will have a steadying influence, and will, for some time to come at any rate, be very necessary for minimising the risks of the full transfer of power. Second Chambers exist in a majority of the constitutions of the world, and we have recommended their institution in our province after thoroughly sifting the arguments which have been advanced for and against them. In the absence of a Second Chamber the Governor will be called upon much more frequently to interfere with the decisions of the Legislature, and this will place him in a position of difficulty. We consider that instead of the essential safeguards being left solely to the Governor it would be far more satisfactory from the point of view of everybody that a Second Chamber composed of the responsible and saner elements of the people should serve as the safety valve.

Powers of the Second Chamber.

66. We have given careful thought to the question of the powers which should be given to the Second Chamber. We are of opinion that it should not be an inane, effete body, providing only a weak brake to the effusions of the First Chamber, although we recognise that the real motive power must rest with the latter. It

goes without saying that it will be the First Chamber that will make or unmake Ministries even though, as we have recommended, the Ministers may be selected from either Chamber. We are agreed that the Second Chamber should be invested with the following powers.

In matters of legislation, including taxation bills, the Second Chamber must have equal and concurrent powers with the First. All bills may originate in either Chamber, though an exception in this regard may be made in respect of taxation bills which may not be initiated in the Second Chamber. The method of removing deadlocks should be in principle the same as that provided by the Government of India Act, 1919, for the Central Legislature, but with a slight modification. If either Chamber refuses to pass a bill in the same form as it was passed by the Chamber in which it originated, or passes it with amendments that are unacceptable to that Chamber, the Governor should have, at the instance of the Second Chamber, or of his own accord, the power to call a joint session of both the Chambers, and the matter will be decided by a majority of votes.

In regard to the Budget we think that it will not be possible to give to the Second Chamber absolutely equal powers with the First. The power over the purse is the recognised right of the popular House to which the Ministry is responsible. If the Ministry can seek the aid of the Second Chamber in restoring demands refused by the First the system will become unworkable. We would, however, make the suggestion that the Second Chamber might be allowed to consider the Budget like any other bill and make its own recommendations, which would be considered by the First Chamber; in case the latter does not accept these recommendations, and the former considers them to be of importance, the former might suggest to the Governor to call a joint

session and decide by a majority. Under this scheme the Second Chamber would be expected not to insist on every one of its recommendations being considered in this manner. It will resort to this method of revision only in matters of real importance, so that in ordinary matters relating to finance the First Chamber will continue to have the final say. We would, however, make it clear that the Second Chamber should have no power to interfere in censure motions; if a cut is intended by the First Chamber to be an expression of want of confidence the Ministry should not be allowed to seek the help of the Second Chamber to rescind or modify it. The suggested power of the Second Chamber would be exercised only in the case of substantial cuts made on the merits of a demand.

Composition of the Second Chamber.

67. We are of opinion that the Second Chamber should be composed of landlords, stake-holders and others who may bring to the Chamber the benefits of official experience, expert knowledge, and intellectual attainments in various fields. In other words, besides landed aristocracy, the aristocracy of commerce, of talent, and of past achievements in various fields, should also find a place in the Second Chamber. We are agreed that there will be no place for the official *bloc* in either Chamber. Two alternative schemes for the composition of the Second Chamber have been considered. The following scheme has the support of the Chairman, Mr. H. C. Desanges, and Babu Rama Charana :—

First Scheme.

Total strength			...	60
Elected by General Constituencies—				
Non-Muhammadan and Muhammadan			...	30
European	...	...	...	2
Anglo-Indian	...	...	...	2
Indian Christian		...	...	2

Elected by Special Constituencies—

Trades and Commerce	5
The British Indian Association of the Taluqdars of Oudh	3
The Agra Province Zamindars' Association	2
The Muzaffarnagar Zamindars' Association	1
The University Constituency	1

Nominated—

Depressed and Backward classes ...	5
Labour	1
Women	1
General nominations	5

Rai Bahadur Kunwar Bisheshwar Dayal Seth, Khan Bahadur Hafiz Hidayat Husain and Dr. Shafa'at Ahmad Khan are for the following scheme :—

Second Scheme.

Total strength ... 50

Nominated (10)—

Depressed and Backward classes ...	1
Labour	1
Women	1
Universities	1
Europeans	1
Anglo-Indians	1
Indian Christians	1
General nominations	3

Elected by Special Constituencies (10)—

British Indian Association	4
Agra Province Zamindars' Association ...	3
Muzaffarnagar Zamindars' Association ...	1
Chambers of Commerce	2

Elected by General Constituencies 30

Under either scheme, the number of seats reserved for the Muslims is to be in accordance with the Lucknow Pact as embodied in the Rules framed under the Government of India Act, 1919.

The First Chamber.

68. We have given due consideration to the criticism that at present the constituencies are too large to make it possible for direct touch to be maintained between

the electors and their representatives. The easiest solution of the difficulty would be to increase the strength of the House. We have unanimously accepted an increase of approximately 50 per cent. in the strength of the present Legislative Council (which will become the First Chamber) as being sufficient to meet the present needs, and we suggest that the First Chamber should consist of 182 members as detailed below :—

Total strength ...	182
Elected by General Constituencies—	
Non-Muhammadan and Muhammadan ...	133
European	2
Anglo-Indian	3
Indian Christian	3
Elected by Special Constituencies—	
Trade and Commerce	5
British Indian Association	8
Agra Province Zemindars' Association ...	6
Muzaffarnagar Zemindars' Association ...	2
University of Allahabad	1
Universities of Agra and Lucknow	1
Nominated—	
Depressed and Backward classes	15
Ladies	2
Labour	1

As in the case of the Second Chamber, the number of seats reserved for the Muslims in the First Chamber should be in accordance with the Lucknow Pact of 1916 as embodied in the Rules framed under the Government of India Act, 1919. We have already said that in making such nominations to either Chamber as are within the Governor's unfettered prerogative he should be charged with the instruction that Muslims should get their proper share of these nominations. It is also understood that the election of the Muslims should be by separate electorates.

In regard to the Depressed and Backward classes it is felt that the provision of separate electorates for them

is a matter of great difficulty. Babu Rama Charana, although he does not see any great difficulty in forming separate electorates, agrees with the rest of the Committee that under the existing circumstances the rights of the Depressed and Backward classes would be best safeguarded by reserving for them 15 seats to be filled by nomination. In making these nominations the Governor may take into account recommendations of recognized societies and associations of the different sections of the Depressed and Backward classes. Since the Depressed and Backward classes constitute a majority of the population of the province they will need protection only so long as they are socially and educationally backward. When their present disability is removed they would be able to compete on even terms with the higher class Hindus. This reservation should, therefore, hold good only as long as the community finds it impossible to obtain adequate representation through the general non-Muslim constituencies, for which a period of ten years has been suggested. The right to determine as to when this reservation should be discontinued should be left to the Legislature and to the Governor. As already stated, in time the Depressed and Backward classes will find it to their own advantage not to have such a reservation.

We have made provisions for a large number of seats for Zemindars and Taluqdars. We consider that they deserve this separate representation in view of their political importance. Although so far they have constituted the largest majority of the elected members of all the three successive Councils, yet they fear that, as time goes on and democracy advances, they may find it increasingly difficult to secure that proportion of seats in the local Legislature which they deserve by virtue of their being the largest contributors to the provincial exchequer. The constituencies which would return the Zemindars to the Legislature would be in respect of the

Taluqdars of Oudh, the British Indian Association of Lucknow, and in respect of the Zemindars of the Agra Province—(1) the Agra Province Zemindars' Association, and (2) the Muzaffarnagar Zemindars' Association.

In regard to trade and commerce we are of opinion that besides the three seats at present allotted to the two Chambers of Commerce at least two seats should be allotted to provide representation to (*a*) the established industries of the province, and (*b*) commercial concerns which pay a specified amount of income-tax. The Upper India Chamber of Commerce, which is at present represented by two seats, consists mainly of European mills and concerns in Cawnpore. Its membership outside Cawnpore is very limited. The United Provinces Chamber of Commerce has a membership peculiar to itself and does not embrace within its fold a very large number of Indian industrial and commercial interests of the province. We consider that a constituency can be formed which should embrace all commercial and industrial concerns in the province which either pay a certain amount of income-tax per year or fall within the definition of a factory under the Indian Factories Act, and two seats should be allotted to this constituency. We are aware that there is a constituency of this kind at present in the Punjab.

The representation provided for Europeans, Anglo-Indians, and Christians shall be from separate electorates which would not be difficult to set up. We are opposed to the present system of nomination which applies to Anglo-Indians and Christians. In regard to Women and Labour we think the only workable method would be nomination. It does not seem practical politics to think of setting up constituencies for these special interests.

69. We feel that the present term of the Provincial Council is inadequate. The first year is taken up by a

Term of the Legislature.

new member in gaining experience and acquiring knowledge, the second year is the time when most members can settle down to useful work, the third or the last year is the time when members are pre-occupied with thoughts of the next election. The term of three years, therefore, does not give to the average member more than one year of active work. There seems to be no definite advantage in putting the country to the expense and excitement of a general election every three years. We have, therefore, come to the conclusion that the normal term of the Lower House should be five years and that of the Upper House six.

Franchise : For the First Chamber of the Provincial Legislature.

70. We have given our particular consideration to the question of franchise as it is the very basis of a democratic structure of Government. As we have shown in Part I, the present electorate is only 3·5 per cent. of the total population of the province. We are of opinion that conferment of further powers on the Provincial Legislature will render a large extension of the franchise immediately imperative, though not to an extent which would under the existing circumstances make it unworkable. We have fully considered the arguments urged in favour of an immediate provision of adult suffrage, but much as we consider it to be a consummation to come as early as is possible, we feel that it is not practical politics to enfranchise all adults just at present. As a condition precedent to the establishment of adult suffrage, there must be a good deal of advance in the education and political consciousness of the people. We do not subscribe to the view that illiteracy is by itself a sufficient ground for withholding any widening of the franchise, but we do feel that the immediate enfranchisement of the 88 per cent. of the adult males and the 99·6 per cent. of the adult females who are at present un-enfranchised will involve too sudden and too risky a change. The

people have not even had the training and experience of wide Municipal and District Board franchises which are practically the same as that for the Legislative Council.

A circumstance that we have kept in view in our discussions on the extension of the franchise is the great disparity between the proportion of electors to the population in the urban and the rural constituencies respectively: whereas approximately 10 per cent. of the urban population is enfranchised at present, the proportion of rural electors to the rural population is only 3 per cent. Our recommendations, therefore, for the extension of the urban franchise do not aim at any considerable increase in the electors.

After considerable deliberation we have decided to recommend a lowering of the existing rent and revenue qualifications for the rural franchise, the provision of an independent literary qualification for both rural and urban constituencies, and the addition of special qualifications for women. At present, broadly speaking, all persons who pay Rs. 25 as land revenue or Rs. 50 as rent get the vote: we recommend that the figures be reduced to Rs. 10 and Rs. 25 respectively. We have no figures to indicate the increase that this reduction will result in. We were, however, supplied by the Local Government with statements of persons paying land revenue and rents between certain limits. These statements were prepared in 1918, but they give a fairly correct idea of the present position. The number of persons paying between Rs. 10 and Rs. 25 as land revenue were not ascertained, but the number of those paying Rs. 25 and over were estimated to be about three hundred and thirty-three thousands and those paying from Re. 1 to Rs. 24 to be four hundred and forty-eight thousands. The number of persons paying between Rs. 25 and Rs. 49 as rent was estimated at one million

and nine thousands and of those paying Rs. 50 or over at about eight hundred and seventeen thousands.

Besides lowering the existing rent and revenue qualifications we have decided to recommend the addition of an educational qualification for both rural and urban constituencies. We consider that this provides the best alternative to adult franchise. Compulsory primary education has been introduced in various parts of the province, and it is hoped that in time every boy and girl will have passed through a primary school. Consequently as education advances, the franchise will be automatically widened. Another consideration that has weighed with us is that under the present property qualifications many persons that would be very good electors are left out as a result of the rules relating to "joint families" and "joint tenancies". The educational qualification will bring many of such persons on the electoral rolls. Lastly, we do think that an educational qualification will, to some extent at least, stimulate the progress of education. The qualification that we would recommend is the possession of the Upper Primary—class IV—certificate: any higher educational test will result in a negligible increase. We have satisfied ourselves that there is no danger as to the reliability and authenticity of the Upper Primary certificates: they are properly issued and are recognized by the Education Department of the province. There will be no administrative difficulty, as we contemplate that those who *possess* the certificate should claim and get the vote. For the convenience of those who may have lost these Upper Primary certificates we recommend that the passing of the Vernacular Final Examination should entitle one to the vote. There is no corresponding Anglo-Vernacular certificate issued by the Education Department, and consequently, in spite of the marked inequality between the Vernacular Upper Primary certificate and the Anglo-Vernacular

Matriculation certificate, we have to accept the Matriculation (or other equivalent) examination of the Anglo-Vernacular schools as the minimum Anglo-Vernacular qualification for getting the vote. It may be noted that the passing of Matriculation (or equivalent) examination or a Proficiency examination in any vernacular or classical language qualifies one for the present District Board franchise.

Lastly, we would provide for special franchise facilities for women. We find considerable force in the points made by the Ladies' Deputation before the Joint Free Conference at Lucknow. Under Hindu law very few women can inherit property in their own right, and the result is that only ·4 per cent. of the female adults in the province are at present enfranchised. We, therefore, recommend that in addition to the franchise qualifications that they may possess in their own right, they should get the vote also in their husbands' right to a certain limit as indicated below. We would, however, raise the age limit in the case of women from 21 to 25.

We now sum up our recommendations for alterations in the franchise for the Lower House of the Provincial Legislature—

(1) *Rural as well as urban constituencies*—

(*a*) All persons, 21 years of age, who possess the Vernacular Upper Primary (IV standard) certificate, or have passed the Vernacular Final or the Anglo-Vernacular Matriculation (or other equivalent) examination, should be enfranchised.

(*b*) In addition to the ordinary franchise qualifications that they may possess in their own right, the right of vote should also be given to women whose husbands possess property, rent or tax qualifications

three times those qualifications that at present entitle men to the Legislative Council franchise; provided, always, that no women under 25 should get the vote. In other words, the wife of a man who pays Rs. 150 as agricultural rent or Rs. 75 land revenue or who occupies a house or building of an annual rental value of Rs. 108, or who pays income-tax on an income of Rs. 6,000 should be enfranchised if she does not possess the ordinary qualification in her own right.

(2) *In rural constituencies*—

(*a*) payment of Rs. 10 or more as land revenue, or

(*b*) payment of Rs. 25 or more as rent should entitle one to vote.

For the Second Chamber of Provincial Legislature.

71. We are of opinion that the franchise for the Second Chamber of the Provincia Legislature should be on the same lines as that for the Council of State. We have already given two alternative schemes of composition of the Second Chamber. According to either of them some of the seats will be filled from special constituencies; the franchise in these constituencies need not be discussed. For the general constituencies we would recommend the same franchise as that for the Council of State with the exceptions that payment of Rs. 2,000 as land revenue (instead of Rs. 4,000) and of an income-tax on an income of Rs. 5,000 (instead of on an income of Rs. 10,000) should entitle one to the franchise for the Provincial Second Chamber. This reduction of the qualifications by a half is necessary as the electorate based on the Council of State franchise will be too limited for electing 30 members.

72. We consider that no change in the existing franchise for the Legislative Assembly is called for; the candidates have a sufficient number of electors, and scattered over wide areas, to canvass. The only addition that we would recommend is that graduates of recognized Universities should be given the vote, subject, of course, to the age qualification. For the Legislative Assembly.

73. We think it necessary to recommend certain alterations in the existing franchise for the Council of State :—

(1) The land revenue limit should be reduced from Rs. 5,000 to Rs. 4,000. The main reason for this is that the proportion of the assessment to assets has been reduced in our province from 50 per cent. to 40 per cent.

(2) Vice-chairmen of Municipal and District Boards and presidents and vice-presidents of registered Co-operative Societies should be deprived of the vote. In view of the high land revenue and income-tax qualifications we consider the enfranchisement of these classes as rather anomalous.

(3) Instead of all the members of a Court of a University only the members of its Executive Council or Syndicate should be entitled to vote. There are now a number of Universities in the province and the total membership of the several courts is rather high.

(4) Presidents of only *recognized* Chambers of Commerce in the province should be entitled to vote. This is only a technical alteration.

(5) All retired permanent judges of the High Court or the Chief Court and retired members of the Provincial and the Central Governments should be enfranchised. Comment is superfluous.

The Services: Scope of our recommendations.

74. We have received a large number of Memoranda from the various Imperial and Provincial Services raising issues of promotion and emoluments and allowances which have obviously little connection with the present constitutional inquiry. We have confined our discussions to the few important questions which will be affected by our proposals for constitutional changes in the province and we summarize our views on each of these matters below.

The future of the All-India Services.

75. The most important question that has attracted wide attention and on which divergent views have been expressed in the country is that of the future of the All-India Services, specially the Indian Civil Service and the Indian Police Service. The United Provinces Government's proposals do not contemplate the transfer of Law and Order, and they have naturally recommended the retention of the Indian Civil Service and the Indian Police Service. It is, however, noteworthy that in the case of the services appertaining to the departments the transfer of which they have recommended they observe that "the result of the transfer of the Irrigation and Forest Departments would be to close all further recruitment to the Indian Services of Engineers and the Indian Forest Service." Further, they admit that the retention of the Indian Civil Service and the Indian Police Service in a unitary system would give rise to "anomalies and difficulties". We entirely agree: we hold that the retention of these services in a system of full provincial autonomy would unnecessarily complicate matters. We

have no doubt that those who advocate the retention of these services even in a system of full provincial autonomy are not oblivious of the difficulties arising from the constitutional position subsisting between the Ministers and their subordinates, the members of the All-India Services. What, to our mind, such thinkers fear is that Provincial Services will not attract Europeans of the requisite ability and that the abolition of these All-India Services will affect the efficiency of the administration. In our opinion there is no ground for either of these apprehensions. The abolition of the Indian Civil Service and the Indian Police Service would not mean any lowering of the standard; it would be possible to retain the present separation into superior and inferior grades, the Indian Civil Service being replaced by a Provincial Civil Service—"Class A"—, and the present Provincial Civil Service being designated as "Class B." Special terms such as overseas allowances may be offered to attract Europeans to the "Class A" Services. In this connection we would make special mention of the extremely useful and helpful Memorandum submitted by Mr. W. R. Barker, the President of the Public Services Commission. His analysis of the position leads him to the conclusion that "it can longer be said even approximately that the best Indians get into the Indian Civil Service." Mr. Barker goes further and remarks—

"I have been assured from many quarters that the entrants to the Provincial Services are often superior to those for the Indian Civil Service, and I know of several cases in which a candidate who has been unsuccessful for the Provincial Service has been successful for the Indian Civil Service."

At another place he remarks in the same connection :—

"The situation is really becoming chaotic. The distinction between a superior service and an inferior (especially such a wide distinction as exists in India) can only be justified

as long as the personnel of the one service is markedly superior to that of the other. As regards recruits now coming forward no such marked superiority exists."

In view of these well-considered conclusions of the President of the Public Services Commission it cannot be very well asserted that the abolition of the Indian Civil Service and the Indian Police Service will necessarily mean a lowering of standards. It is noteworthy that the Inspector-General of Police of these provinces feels more satisfied with the work of the officers promoted from the Provincial Police Service than with the directly recruited Indians to the Imperial Police Services.

Dr. Shafa'at Ahmad Khan differs from us in this matter and thinks that the Indian Civil Service and the Indian Police Service should be retained for some time to come. He has discussed his point of view in his Explanatory Note.

Rights of the present members of the All-India Services Safeguarded.

76. The change, however, will not prejudice the terms under which the present members of the All-India Services were employed. Under the existing rules the right of premature retirement has to be exercised within a year of the transfer of the field of service to which the members concerned were recruited. We are prepared to extend this period. Besides, the protection of their rights and privileges will, as at present, be a special charge imposed on the Governor by the Instrument of Instructions. We have also recommended that the salaries and pensions of members of the All-India Services in employ at the time of the introduction of the next constitutional changes should be included in non-votable permanent changes.

A Provincial Public Services Commission.

77. The most important safeguard that the services require in a system of full responsible Government is against the influence of party politics. It has been recognized all over the world that the Ministry or the

Legislature should have no hand in the recruitment, promotion, or punishment of the permanent servants. The best protection of the services from the changing politics of the Legislature will be afforded by a Provincial Public Services Commission, and we consider its establishment an essential part of our proposals. It has sometimes been urged that a Provincial Public Services Commission is a costly luxury, that there will not be enough work for it. We do not subscribe to this view. We are recommending the provincialization of all the services (and we would entrust the Commission with extensive functions. We would wish it to become, in the words of the Lee Commission, "the recognized expert authority on all service questions", and we are sure the Provincial Public Services Commission will have its hands full. In our opinion the Commission should have the final say in all questions relating to the recruitment and qualifications of candidates for at least the higher services in the province. It should determine the rules for and organize competitive examinations. We would also give it sole disciplinary powers in the case of the higher services. At present the system is very unsatisfactory. All disciplinary orders in the case of the Provincial Services are first passed by the Governor-in-Council or the Governor acting with his Ministers, and an appeal from the orders lies to the Governor. Mr. Barker rightly remarks that this is "a contradiction of everything which an appeal ought to be." We would, therefore, make the Provincial Public Services Commission the tribunal for disciplinary proceedings in the case of the higher services, its orders being subject to an appeal to the Governor. The Commission should be charged with the duty of seeing that all classes and communities including the Depressed and Backward classes receive their proper share of appointments. To keep the members of the Commission above party politics we would

recommend that they should be appointed by the Crown like the Judges of the High Court.

European element: Anglo-Indian Demand.

78. In the present political condition of the country we consider it important that a certain proportion of Europeans should be retained in the services, specially in the Executive and Police Services. Mr. H. C. Desanges is of opinion that the European element in those services should not be allowed to fall below 25 per cent. for some time to come. We see, however, that this is bound to be the case as the present numerical strength of the Europeans in the services is such that their proportion will remain more than 25 per cent. for a considerable time to come.

Mr. Desanges has suggested, and we agree with him, that the proportion of appointments held by the Anglo-Indians in Railway, Customs, Post and Telegraphs and I.M.D. services should not be reduced. It is in these departments that Anglo-Indians have shown the greatest aptitude for public service, and alike in the interest of efficiency and in fairness to Anglo-Indians, we should not take away from them what they have. We, however, realize that the services in these departments will be the concern of the Central Government and not of the Provincial.

The Judiciary.

79. We would strongly recommend that the separation of the judiciary from the executive should be given effect to without delay. We regard this reform as overdue. We are opposed to the centralization of the High Courts. They would continue to be under the Provincial Government as at present, although the appointment of Judges will, as now, remain a Royal prerogative. We would further like to suggest that the establishment of a Supreme Court in the country would be a necessary adjunct of the constitutional changes proposed. Without a Supreme Court there would be no

tribunal to decide constitutional and other disputes between the different provinces and between the Central and the Provincial Governments.

Finance.

80. We have given careful consideration to the important note prepared by Mr. Layton, but as we have had no opportunity of going fully into the whole question of finance, we would not like to hazard final opinions on a subject which is at once so intricate and important. We, however, wish to record our disapproval of the proposal to impose a tax on agricultural incomes. We favour the idea that the present division of central and provincial revenues should be maintained; but as the present revenues are not sufficient for the requirements of the provinces, it is essential that the Central Government should make contributions to the provinces out of the surpluses which it would have in the future. Mr. Layton admits that with the devolution of more powers and responsibilities on the Provincial Governments, the revenue of the Central Government should exceed its requirements. It is only fair that these surpluses should be divided amongst the provinces. There seems to be no equitable basis of making this division other than that of making subsidies *per capita*. The exact amount of the subsidy per head will be decided from year to year as it will depend on the surplus which is available for distribution. The basis of distribution should, however, be the same for every province; there is no justification for making invidious distinctions as between province and province on grounds of "needs", "contribution to the Central taxes", and so on. In regard to borrowing we would keep a certain amount of control in the hands of the Central Government so that there may be no competition in interest rates between the different provinces. Apart from this each province should be left to borrow for itself whatever money it may require.

Central Government.

81. We feel that we are not really called upon to make any recommendation in regard to the future constitution of the Central Government. This appears to be a matter outside the purview of a Provincial Committee. We shall, therefore, touch only those matters which we consider are directly related to constitutional changes in the provinces. We have stated that all powers, which do not expressly devolve on Provincial Governments, should according to our scheme remain with the Central Government. We would suggest that if our proposals for provincial autonomy are accepted, European Education should be made a Central subject. With this exception we have no change to make in the present division of subjects as between the Central and Provincial Governments. Our special proposals regarding the amendment of the Constitution in this particular are given elsewhere.

As to the question of the introduction of responsibility in the Central Government, we have said that we contemplate Dominion Status at no distant date, and we feel that a substantial immediate advance is not only due but necessary in the interest of all concerned. We would, however, leave it to those who are more competent than ourselves to discuss what should be the degree and the nature of the next instalment of popular advance in the field of the Central Government. The provinces are directly interested in the future constitution of the Central Legislature. We have already stated what we would recommend the future franchise for the Council of State and the Legislative Assembly to be. As regards the composition of the Council of State we have no changes to suggest; but about the Assembly we would like to point out that the present constituencies are hopelessly unwieldy and it is humanly impossible for anyone to keep in touch with

the electors. There are at present allotted to our province 14 seats in the Assembly. We would strongly recommend that this number be at least doubled. This would proportionately decrease the size of the constituencies, which at present in these provinces vary from 39,761 to 8,645 square miles in area. We are, however, not in favour of making election to the Council of State or the Legislative Assembly indirect and recommend that direct election should continue. We would make one exception: the Provincial Legislature should be given the right to return by election from its own body one-fifth of the total number of Assembly seats allotted to the province. The vacancies created in the Provincial Legislature will be filled by means of bye-elections. If our recommendation is accepted, this province would return 28 members from the general territorial constituencies and seven as representing the Provincial Legislature.

Amendment of the constitution : General considerations.

82. We have given considerable thought to the question of the Amendment of the Constitution, and have endeavoured to ascertain whether the processes of such Amendments as followed in other countries, will hold good in our case. It is well known that a Constitution, no matter how carefully drawn up, is in time apt to become out of date owing to the changing needs of the country. New problems may arise, which at the time of drawing up of the Constitution cannot be foreseen. We realize that the existing conditions on which we are basing our present recommendations may change beyond recognition. A rigid Constitution will not adjust itself to such changing needs and will in consequence prevent expansion and development of the body politic along natural lines. Our peculiar needs and circumstances do not permit of our slavishly copying the provisions for the amendment of the Constitution that exist in the various countries of the

West. We consider that a Constitution can be so fashioned and operated as to offer disruptive forces just as much free play as may disarm their violence and bring all parts of the country in reasonable agreement and unity under a Central Government. For such a Constitution the process of amendment must be neither too elaborate nor to easy and a deliberate and definite process must be prescribed.

Methods of constitutional amendment examined : (a) The U. S. A. Constitution.

83. We have examined the processes by which some of the more important Constitutions of the world can be amended. The United States of America has the following :—

" The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the Constitution or on application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislature of three-fourths of the several States or by convention in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

The individual American State, as distinct from the United States, amends its Constitution by following a line similar to that of the article quoted above.

(b) The Australian Constitution.

84. The Australian Constitution has the following provision :—

"The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament and not less than two and more than six months after its passage through both houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives. But if

any House passes any such proposed law by an absolute majority and the other House rejects or fails to pass it, or passes it with any amendment to which the first mentioned House will not agree, and if after an interval of three months the first mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first mentioned House, and either with or without any amendments subsequently agreed to by both houses, to the electors in each State qualified to vote for the election of the House of Representatives. When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament or the minimum number of the representatives of a State in the House of Representatives, or increasing or diminishing or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law."

(c) The Canadian Constitution.

85. In the case of the Canadian Constitution the process of Amendment belongs to the Imperial Parliament. "There is, however, no difficulty in having an amendment made if and when desired. An Address to

the Sovereign is passed by both Houses of Parliament at Ottawa asking for the amendment specified. The vote on the Address must be unanimous (or practically unanimous); otherwise it will not be forwarded to London. When the Address is received by the Colonial Secretary in London the desired amendment to the British North America Act is passed by the Imperial Parliament as of course and without debate. This is, in substance, simply giving legal validity to an amendment agreed upon by the parties to the original contract, which they desire to amend."

(d) Other Constitutions.

86. Power of Constitutional Amendment is also possessed by Newfoundland, Newzealand and South Africa. The Irish Free State Constitution can be altered within Ireland. In Unitary States the methods of amendment are simpler than those in Federations. In France a change may be made in a joint meeting of the Chamber of Deputies and the Senate. Certain countries have fixed specific majorities for Constitutional changes. A two-thirds majority is required by Rumania and Bulgaria; a three-fourths by Greece and Old Saxony. Certain countries like Holland, Norway, Rumania, Portugal, Iceland, Sweden and some States in Latin America adopt the plan of combining the two-thirds majority with a dissolution followed by a re-consideration of the proposals of amendment. The Swiss Federal Constitution may be revised by means of legislation duly passed through both Houses, provided, however, that if one House rejects the proposals of the other, or if fifty thousand citizens demand any particular amendment, the matter is submitted to the vote of the entire Swiss Electorate. If there is an affirmative majority for the proposal, it is referred to the Federal Legislature for consideration and enactment. The revision, however, comes into force only when it has been adopted by a majority of those

citizens who take part in the Referendum and also by a majority of the Cantons—the result of the popular vote in each Canton being considered as the vote of that Canton.

It is noteworthy that in the case of Imperial Germany legislation involving alterations in the constitution was considered as rejected if there were 14 votes in the Council of the Confederation against it, and, further, those provisions of the Constitution of the German Empire, by which certain rights were established for separate States of the Confederation in their relation to the community, could only be altered with the consent of the State of the Confederation entitled to those rights.

(e) The methods of Referendum and General Election.

87. In many countries the Referendum is now used to effect constitutional amendments. A good deal can be said for this method as it secures the clear verdict of the people on the proposed alteration. We, however, realize that this method is hardly practicable in our case. It has been suggested that something approaching it can be devised by laying down that when a constitutional change has been agreed to by both Houses, the Lower House should be dissolved and a general election take place on the issue of the constitutional proposal. If after the election the new House passes the proposal again by the requisite majority and the Upper House also agrees to it, it should, *ipso facto*, become part of the Constitution. This latter method certainly deserves serious consideration and may be adopted for certain classes of amendments, but we cannot recommend its wholesale application to every manner of amendment.

Difficulties in the suggestion of a precise method.

88. In the present state of our political development we are confronted with a number of difficulties when considering the amendment of any Constitution which

may be given to us. In the first place, the provincial Legislatures can amend only such provisions as relate entirely to the province concerned, and do not encroach on the domain of the Central Government or interfere with other provinces. Obviously, a province cannot be given the power to alter those provisions which are concerned with its relationship with the Central Government. It is extremely difficult to separate matters of purely provincial concern from those which affect its relationship with the Central Government.

In the next place, we do not know what form the Central Government is going to take and to what extent responsibility is going to be introduced in that field. In the case of many countries to which we have alluded, the Senate of the Central Government consists of representatives of the different component States and is intended to provide representation to these States as such. The composition of the Council of State of the Indian Legislature is on a different basis and so there is no institution in the Central Government through which the provinces can press their points of view.

A third difficulty in our way is that a comparatively small proportion of our population will be enfranchised even if our proposals for extending the existing franchise are accepted. Any constitutional changes made by the Provincial Legislature with or without recourse to a general election will, therefore, be the act of a small enfranchised minority. It is not inconceivable that the majority of the population which will not possess the vote for a considerable time to come, may be prejudiced by such changes in which it will not have any voice; though we think that if the electorate is widened in accordance with our recommendations it will comprise within its circle sufficiently large numbers of every class and com-

munity so as to obviate any chances of one class being able to deliberately injure the interests of another.

89. We would recommend that power to make such amendments to the Constitution as do not encroach on the domain of the Central Government should be vested in the Provincial Legislature, and, as already stated, we are inclined to favour the method involving a general election on the issue of the change. There are certain specific classes of amendments to which this method cannot be wholly applied and we would now deal with some of these. Before, however, we do so we would like to make it quite clear that we are not endeavouring to make recommendations for every class of amendment which the Constitution may in time stand in need of. There are several unknown factors to be considered before exhaustive recommendations for every manner of constitutional amendment can be made. Our observations on this subject are, therefore, necessarily of a general nature and are meant only to serve as a basis for the study of a matter the importance of which cannot be overstated. **Our proposals for General Amendments.**

90. We are not unmindful of the fears and misgivings of the minorities and certain class interests. In the case of a minority like the Muslims we have deliberately conceded them certain safeguards which may in time become unnecessary. The provisions of the Constitution should certainly provide the machinery by which these safeguards may at the choice of the minorities concerned be modified or entirely done away with. The simplest process to be followed in such cases appears to be that the proposed change should in the first instance be agreed to by three-fourths of the representatives of the community affected in the Provincial Legislature, and then passed by an absolute majority of each of the two houses. We would recommend that a provision to this effect be *Ibid. re* **amendment of safeguards for minorities.**

incorporated in the Constitution. Dr. Shafa'at Ahmad Khan would like to add that an amendment of the safeguards for the minorities guaranteed in the Constitution should be effected only when, after being approved by the Legislature in the manner described above, it has been approved by a majority of the Muslim electors on a plebiscite.

Ibid. re **Governor's Powers.**

91. The question of safeguards vested in the Governor and also the question of the Governor's general powers do not appear to lend themselves to amendment by the Provincial Legislature. Authority to make any changes in the Governor's powers must remain with the Parliament, although it should be open to the Provincial Legislature to make recommendations in regard to them.

Ibid. re **extension of franchise and readjustment of constituencies.**

92. The extension of franchise for the Provincial Legislature and the re-adjustment of constituencies might very well be left to the Provincial Legislature in the same way as by the Government of India Act of 1919 the Provincial Legislatures were given the authority to remove sex disqualification in the case of voters and candidates for those Legislatures. In the matter of a change in the composition of the Legislature or where any change affects the interests of different classes whose special claims have been recognized by the Constitution, an amendment made by the Provincial Legislature should be subject to such approval as may be prescribed.

Ibid. re **Classification of subjects.**

93. The question of altering the present division of subjects as between the Provincial and the Central Governments deserves to be carefully provided for. It is very likely that a revision of the classification now recommended will become necessary as provinces attain their full stature. We would recommend that the Central Government should not be empowered to take away from the provinces without their consent whatever subjects

they have been entrusted with, so that the will of the provinces expressed through their Legislatures will be supreme in such matters. In the case, however, of subjects which are now being entrusted to the administration of the Central Government, decentralization should only be possible if the request of the province is passed by a suitable majority of the Central Legislature.

Discriminatory Legislation.

94. We consider it important that the Statute should contain definite provision that the Legislatures do not possess the power to make any law intended or calculated to discriminate against any commercial, industrial or agricultural interests established or to be established in British India by any person or association of persons, whether British subjects or not. Such a provision should not affect the power of the Indian Legislature to make any law of a discriminative character against the subjects of any country if any law has been passed by the Legislature of such country discriminating against British Indian subjects residing or carrying on business in that country or the power to impose any duty or duties for the protection of any trade, commerce or industry, agricultural or otherwise, in British India. The question might arise as to whether any law made by a Legislature was within the power of the Legislature or not. The decision of this question should be left to the highest tribunal competent to adjudicate on matters arising out of the Constitution. In case a question arises in any Court of British India subordinate to a Chartered High Court as to whether it was in the competence of the Court to make the law, such question shall be referred by such Court to the Chartered High Court of the province in which such Court is situated. The decision of the High Court will be subject to appeal either to the Supreme Court (if one is established in the country) or direct to the King in Council.

95. The Constitution must make provision for certain fundamental rights such as are found in the Constitution of other countries. It is not our intention to give here a comprehensive or full-worded catalogue of these rights. We would only indicate the general nature of rights which it will be necessary to incorporate in the Constitution.

(1) All citizens, including women, will be equal before the law and possess equal civic rights.

(2) Freedom of conscience and free profession and practice of religion will be, subject to public order or morality, guaranteed to every person. The State shall not either directly or indirectly give preference or impose any disability on any religion or those professing it.

(3) The right of free expression of opinion will be guaranteed for purposes not opposed to public order or morality. There will be no legislation of a discriminatory nature.

(4) There shall be no penal law, whether substantive or procedural, of a discriminatory nature.

(5) Every citizen shall have the right to a writ of *habeas corpus*.

(6) No person shall by reason of his religion or creed be prejudiced in any way in regard to public employment, office, power or honour and the exercise of any trade or calling.

(7) All citizens shall have an equal right of access to, and use of, public roads, wells and all other places of public resort.

(8) All rights in private property lawfully enjoyed at the time of the introduction of this Constitution shall be guaranteed.

(9) No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.

(10) There will be no discrimination in the matter of admission into any educational institutions maintained or aided by the State and no person attending any school receiving State aid or other public money shall be compelled to attend the religious instructions that may be given in the school.

Conclusion.

96. The main features of our proposals may now be summed up. We have advocated the abolition of dyarchy which we are convinced cannot be allowed to continue any longer; it has served its purpose and its continuance cannot be justified on any grounds whatsoever. By reason of its illogicality and unworkability even those who have the best of intentions find it impossible to work it any longer and it will be a matter for great disappointment to those who have loyally supported Government if they were to be saddled for a further period with the responsibility of working a system of Government which simply cannot work. Whilst recommending the abolition of dyarchy, we have not suggested a plunge into the unknown from where it will be impossible to retrieve our position. We have provided sufficient safeguards for all emergencies which will act as an automatic check

on any irresponsibility which may evince itself in the initial stages. We are satisfied that we are not taking undue risks. The advance we are recommending is, in our opinion, the minimum that the province has established its claim to and even though it may not satisfy sceptics who are opposed to all progress, we consider, if there is to be any real extension of popular government in accordance with the avowed pledge of the British Parliament, the only possible direction is that indicated by us. We have no use for makeshifts and palliatives. We are not of those who consider there is no alternative between Mussolini and Lenin. We have no blind superstition for democracy which we know can be and has been carried to such extremes as to intensify and brutalize the struggle for existence of the working man and his hard-pressed family. We are not unaware that the unfettered evolution of the democratic theory, which started out with the great word of Liberty on its lips, has been definitely towards slavery, for have we not before us the example of Leninism which has destroyed free speech, trade union combination, and the sanctity of the home for the dumb and driven millions of Russia? But we are not prepared to concede that a rational form of democratic government cannot be devised with inherent safeguards against the dangers just pointed out. We have honestly and conscientiously endeavoured to evolve a scheme which would consist of what is safe and propitious in an intelligent democracy.

We have recommended the extension of franchise to an extent which would enable the toiling masses to feel that they have a share in the government of their province. We have made provision for the further gradual extension of this franchise, our scheme ensuring the right of vote to anyone who has acquired a certain degree of literacy.

We have conceded safeguards to the minorities so as to relieve their mind of the suspicion that the majority community is out to trample under foot their legitimate rights and aspirations. We consider it extremely unwise to put the minorities in a position in which they may feel distrustful of the intentions of their majority compatriots. We believe that the quickest way to bring about a *rapprochement* between the different communities is to guarantee them what they feel doubtful about. We realize we may be seriously criticized by the more advanced section of our country-men for having agreed upon compromises which, as already admitted by us, are not by any means ideal; but we firmly believe no other course is feasible and practicable in the present state of the country. To take one example, we are by no means enamoured of separate electorates which we recognize are to be deprecated for more reasons than one, but if our Muslim fellow-countrymen are not prepared to give them up, is it really right of Hindus to coerce them to the contrary? We consider the problem can best be solved by leaving it to them to come round of their own free will.

We do not pretend that our proposals are perfect and complete in every detail, but we trust that we have given sufficient indication of the general outline of what we would desire the future government of the province to be.

We are glad of the opportunity afforded to us of putting forward our views and thereby serving our country in our own humble way.

With these words, we confidently commend our proposals to the favourable consideration of yourself and your learned colleagues in whose sense of justice and fair play we have every confidence. If these recommendations

prove helpful to you and your colleagues we shall consider that our labours have not gone in vain.

J. P. SRIVASTAVA (*Chairman*).
HIDAYAT HUSAIN.
BISHESHWAR DAYAL SETH.
RAMA CHARANA.
*SHAFA'AT AHMAD KHAN.
30-6-1929.
†KUSHAL PAL SINGH.
3-7-1929.
‡H. C. DESANGES.
28-5-1929.

H. K. MATHUR
(*Secretary*).
3-7-1929.

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* Subject to an Explanatory Note.

† I agree to the Report except so far as it is inconsistent with the statement of the Ministry made before the Joint Free Conference at Lucknow.
KUSHAL PAL SINGH.

‡ NOTE.—Mr. H. C. Desanges left for England in the first week of May, and only the first draft of the Report could be made available to him. He cabled his approval of the Recommendations on May 28, 1929. The Report as in the final form has been despatched to him, and if he wishes to append any Note, it will be forwarded separately.

Secretary.

APPENDIX.

(A) List of Memoranda.

(*a*) India Office Memoranda—

(1) The Legislative Councils ... (E. I. O. 238).

(2) The System of Government in India ... (E. I. O. 239).

(3) The India Office in relation to the Civil Services in India ... (E. I. O. 245).

(4) Financial relations between the Central and Provincial Governments ... (E. I. O. 252).

(*b*) Government of India Memoranda—

(5) Short Sketch of the Existing Reformed Constitution ... ... (E. Ind. 201).

(6) Memorandum on the development and working of representative institutions in the sphere of local self-government ... (E. Ind. 203).

(7) Communal Disorders ... . (E. Ind. 204).

(8) Communal representation in the Legislatures and Local Bodies ... (E. Ind. 209).

(9) The Depressed Classes ... ... (E. Ind. 282).

(10) Financial relations between the Government of India and the Provincial Governments. Parts A.—General, and B.—Taxation ... (E. Ind. 532).

(11) Financial relations between the Government of Inda and the Provincial Governments. Parts C to J. ... (E. Ind. 532) Addl.

(12) Some instances in which the question of the powers of the Government of India of administration of or control over particular subjects has arisen ... ... (E. Ind. 564).

(13) The action taken upon the recommendations made in the Reforms Inquiry Committee's Report ... (E. Ind. 565).

(14) The present representation of Commerce, Industry, Labour, Education and other interests in the Provincial and Central Legislatures ... (E. Ind. 574).

(15) The position of High Courts ... (E. Ind. 642).

(16) Division of the sources of Revenue between the Central Government and the Provincial Governments ... (E. Ind. 655).

(17) The Superior Civil Services in India ... (E. Ind. 703).

(18) The Public Service Commission ... (E. Ind. 721).

(c) All-Provinces Memoranda—

(19) Anglo-Indian Association, London ... (E. All. Prov. 224).

(20) Ditto Supplementary. ...

(21) Council of the European Association ... (E. All. Prov. 232).

(22) The Country League ... ... (E. All. Prov. 273).

(23) Mr. A. Rodger, O.B.E., Inspector-General of Forests ... ... (E. All. Prov. 323).

(24) Indian College of Engineers ... (E. All. Prov. 326).

(25) Indian Provincial Medical Services Association ... ... (E. All. Prov. 401).

(26) W. R. Barker, Esq., Chairman of Public Service Commission, Delhi (E. All. Prov. 608).

(27) Anglo-Indian and Domiciled European Community of India ... (E. Ben. 620).

(28) All-India Conference of Indian Christians ... ... (E. All. Prov. 631).

(29) Indian Police Association ... (E. All. Prov. 706).

(30) Ditto Supplementary .. (E. All. Prov. 706 Supply).

(31) All-India Association of European Government servants ... ... (E. All. Prov. 810).

(32) Indian Officers' Association ... (E. All. Pro. 844).

(33) All-India Sanatan Dharma Sammelan (E. All. Prov. 976).

(34) All-India Mathadhish Sammelan ... (E. All. Prov. 978).

(35) All-India Kurmi-Kshattriya Association ... ... (E. All. Prov. 1061).

(*d*) United Provinces Memoranda—

(36) Mr. L. H. Husain, Editor of the *Al-Adl*, Budaun, United Provinces ... (E. U. P. 50).

(37) Babu Ram Pershad Ahir, Pleader, Sultanpur ... ... (E. U. P. 71).

(38) Nawab Ahmad Husain Khan, O.B.E., K.B. ... ... (E. U. P. 73).

(39) Agra Province Zamindars' Association, Allahabad ... ... (E. U. P. 79).

(40) Ditto (Supplementary) ... (E. U. P. 79).

(41) Indian Provincial Medical Services Association, United Provinces Branch ... ... (E. U. P. 81).

(42) Mr. B. Gosain Dat, Naini Tal ... (E. U. P. 84).

(43) Thakur Jaswant Singh, R.B., Special Magistrate, first class, Shahpur, Allahabad ... ... (E. U. P. 87).

(44) Raja Bahadur Kushalpal Singh ... (E. U. P. 91).

(45) Maulana Muhammad Rafiq, Editor, *Aziz Hind*, Jhansi ... ... (E. U. P. 94).

(46) Nawab Mirza Murtaza Husain Khan (E. U. P. 101).

(47) R. R. Khana, Esq., M.Sc., Registrar, Lucknow University ... (E. U. P. 104).

(48) C. S. Dass, Esq., Advocate, Gorakhpur (E. U. P. 105).

(49) Babu Rama Charana, B.A., LL.B., (E. U. P. 118).

(50) Babu Rama Charana, B.A., LL.B Supplementary ... ... (E. U. P. 118 Supply).

(51) Babu Sitaram ... ... (E. U. P. 145).

(52) Khan Sahib Muhammad Khan, Rais and Honorary Magistrate, Bulandshahr ... ... (E. U. P. 155).

(53) Khan Bahadur A. Syed Fateh Shah, Bar.-at-Law, Sitapur ... (E. U. P. 157).

(54) Agra District Board ... ... (E. U. P. 163).

(55) Khan Bahadur Masud-ul Hassan, M.L.C., ex-Joint Secretary, All-India Muslim League, Moradabad (E. U. P. 160).

(56) Rai Bahadur Hardeo Pershad, Advocate, Fyzabad ... ... (E. U. P. 188).

(57) Khan Bahadur Mr. Muhammad Zaki, Government Pleader, Gorakhpur ... (E. U. P. 189).

(58) Pandit Sham Shanker, Honorary Secretary, Temple of All Religion, Benares ... ... (E. U. P. 208).

(59) Report of the working of the system of Government, United Provinces, (United Provinces Government Memorandum, volume I) ... (E. U. P. 216).

(60) Ditto ditto (volume II) ... (E. U. P. 216A).

(61) Ditto ditto (volume III) ... (E. U. P. 216B).

(62) The Non-Gazetted Civil Accounts Brotherhood, United Provinces ... (E. U. P. 256).

(63) Jat community, Bijnor ... ... (E. U. P. 257).

(64) Muhammad Mubarak Ali Shah, Gonda (E. U. P. 258).

(65) United Provinces Association of European Government servants ... (E. U. P. 276).

(66) United Provinces Treasurers' Association, Lucknow ... ... (E. U. P. 332).

(67) United Provinces Addharm (Aborigines) Sabha, Chuharpur district, Dehra Dun ... ... (E. U. P. 334).

(68) Income-tax Officers' Association, Cawnpore ... ... (E. U. P. 362).

(69) Kahar Sudharak Mahasabha, Cawnpore (E. U. P. 363).

(70) United Provinces Zamindars' Association, Muzaffarnagar ... (E. U. P. 364).

(71) British Indian Association of the Taluqdars of Oudh ... ... (E. U. P. 377).

(72) United Provinces Provincial Police Association ... ... (E. U. P. 379).

(73) United Provinces Engineers' Association. ... ... (E. U. P. 384).

(74) Rai Bahadur Shah Durga Prasad ... (E. U. P. 402).

(75) Guru Charan Lal Varma, Advocate, Gonda ... ... (E. U. P. 411).

(76) Khan Sahib Muhammad Asghar Ali Khan ... ... (E. U. P. 412).

(77) Jiva Ram, Esq., B.A., LL.B., Vakil, Moradabad ... ... (E. U. P. 425).

(78) All-India Adi Hindu (Aborigines) Mahasabha, Cawnpore ... (E. U. P. 427).

(79) Munshi Hari Tamta, Chairman, Kumaun Shilpkar Sabha, Almora (E. U. P. 429).

(80) Mr. Bala Sahai, Secretary, Municipal Board, Chandausi ... ... (E. U. P. 432).

(81) Mahant Ram Das Nanak Padri, Lahimpur ... ... (E. U. P. 438).

(82) Mr. Maqbul Ahmad, Honorary Special Magistrate, Gonda ... ... (E. U. P. 442).

(83) Rai Sahib P. Hansahai, Chairman, Municipal Board, Etawah ... (E. U. P. 477).

(84) Provincial Judicial Services of the Provinces of Agra and Oudh, Bihar and Orissa, Bombay, Central Provinces, Madras and the Punjab ... (E. U. P. 450).

(85) H. S. Chauhan, B.A., U.P.C.S., Executive Officer, Municipality, Agra (E. U. P. 451).

(86) Girjadhish Prasad, Ballia, United Provinces ... ... (E. U. P. 452).

(87) Babu Khem Chand, M.L.C., President, All-India Shri Jatav Mahasabha, Agra ... ... (E. U. P. 454).

(88) Ditto ditto (Revised) (E. U. P. 454 Supply).

(89) Dr. Dhan Singh, President, All-India Jatav and other Depressed Classes Education Association, Agra ... (E. U. P. 455).

(90) Ho-qo-qul Muslemeen Association, Gorakhpur ... ... (E. U. P. 466).

(91) All-India Yadava Mahasabha, Gorakhpur ... ... (E. U. P. 481).

(92) Khan Bahadur Syed Muhammad Fazl Rabb, Special Magistrate and Assistant Collector, first class, Allahabad ... ... (E. U. P. 490).

(93) Khan Bahadur Raziuddin Ahmad, Gonda ... ... (E. U. P. 492).

(94) Rao Abdul Hameed Khan, President, Muslim League, Muzaffarnagar (E. U. P. 496).

(95) Raja Sidheshwari Prasad Narayan Sinha, C.B.E., Gorakhpur ... (E. U. P. 501).

(96) Rai Sahib Pandit Rup Kishan Handoo, Special Magistrate, Allahabad ... ... (E. U. P. 515).

(97) Shah H. Itrat Husain, B.A., Vakil, Benares ... ... (E. U. P. 524).

(98) Mr. M. A. Rauf Abbasi, Managing Editor of the *Huque*, Lucknow ... (E. U. P. 545).

(99) Rai Bahadur Kunwar Bisheshwar Dayal Seth, M.L.C., Kotra Biswan, Sitapur ... ... (E. U. P. 568).

(100) Muhammad Fazle Ali, B.A., LL.B., Vakil, Naini Tal ... (E. U. P. 569).

(101) Rai Sahib Brij Ballab Kishore, Sadiq, Fyzabad ... ... (E. U. P. 573).

(102) Sri Bharat Dharma Mahamandal, Benares ... ... (E. U. P. 581).

(103) Mr. Sh. Nooroodin, Meerut ... (E. U. P. 596).

(104) Upper India Chamber of Commerce, Cawnpore ... ... (E. U. P. 602).

(105) Rai Bahadur Chaudhri Amar Singh, O.B.E., Rais and Special Magistrate, Pali, Bulandshahr ... (E. U. P. 605).

(106) Representation of the Muslims of the United Provinces ... ... (E. U. P. 623).

(107) Ditto ditto Supplementary ... (E. U. P. 623 Supply.)

(108) Kunwar Muhammad Ubaidullah Khan, M.B.E., Zamindar, Dharampur, Bulandshahr ... ... (E. U. P. 639).

(109) Muhammad Yamin Khan, Esq., M.L.A., Meerut ... ... (E. U. P. 648).

(110) Mr. Arjundeo, President, Door Sudhar Sabha, Dogadda, Garhwal ... (E. U. P. 652).

(111) Petition of Tamboli community ... (E. U. P. 657).

(112) Chamars of Cawnpore ... ... (E. U. P. 659).

(113) Nawab Syed Khaqan Husain, President, Cawnpore Shia League, Cawnpore ... ... (E. U. P. 721).

(114) Jhansi District Board ... ... (E. U. P. 775).

(115) Dr. Ajodhya Prasad, Secretary, Kisan Sabha, Gonda ... ... (E. U. P. 756).

(116) European Association, United Provinces Branch, Cawnpore ... (E. U. P. 782).

(117) Seth Onkarnath Tandon, Sitapur ... (E. U. P. 811).

(118) United Provinces Branch of the Indian Police Association ... (E. U. P. 857).

(119) Saiyid Ali Muhammad, B.A., LL.B., Lucknow ... ... (E. U. P. 870).

(120) Her Highness the Dowager Rani Sahiba of Mandi ... ... (E. U. P. 878).

(121) The Muslims of the United Provinces (E. U. P. 890).

(122) Anjuman Anbar ... ... (E. U. P. 892).

(123) Syed Abdul Ghaffar Rizavi, Lucknow (E. U. P. 894).

(124) Agra University ... ... (E. U. P. 1109).

(125) Pasis of Lucknow ... ...

(126) Mr. H. S. Dhusya, President, Adi Hindu Sabha, United Provinces ...

(B) NAMES OF WITNESSES AND DEPUTATIONS WHO GAVE EVIDENCE IN THE UNITED PROVINCES.

(1) Sir Ivo Elliott, Bart., I.C.S., Secretary, Local Self-Government, United Provinces.

(2) Mr. B. D'O. Darley, C.I.E., I.S.E., Chief Engineer, Irrigation, United Provinces.

(3) Mr. E. A. H. Blunt, C.I.E., C.B.E., I.C.S., Finance Secretary, United Provinces.

(4) Mr. T. Sloan, I.C.S., Officer on Special Duty, United Provinces.

(5) Mr. F. F. Channer, I.C.S., Chief Conservator of Forests, United Provinces.

(6) Ladies' Deputation (the Maharani of Mandi, Mrs. Ahmad Shah, and Mrs. Chitambar).

(7) Mr. A. Monro, I.C.S., Collector, Cawnpore, and Mr. P. Mason, I.C.S., Superintendent, Dehra Dun.

(8) Deputation from the Muslims of the United Provinces (1. Khan Bahadur Masudul Hasan, Bar.-at-Law, M.L.C., 2. Mr. Zahur Ahmad, Bar.-at-Law, M.L.C., Secretary to the Committee, 3. Shaikh Abdulla, M.L.C., Advocate, Treasurer, Muslim University, Aligarh, 4. Khan Bahadur Fasihuddin, B.A., M.L.C., Retired Collector, 5. Raja Ejaz Rasul Khan, C.S.I., of Jahangirabad, 6. Nawab Jamshed Ali Khan, M.B.E., M.L.C., 7. Munshi Ihtisham Ali, President, U. P. Muslim League, 8. Saiyid Habibullah, M.L.C., 9. Khan Bahadur Fazlurrahman, M.L.C., 10. Khan Bahadur Shah Badre Alam, M.L.C., 11. Mr. Abdul Bari, Bar.-at-Law, M.L.C., 12. Nawab Sajjad Ali Khan, M.L.C., 13. Khan Bahadur Saiyid Zafar Husain, Bar.-at-Law, M.L.C., 14. Khan Bahadur Ubaidurrahman Khan, Bar.-at-Law, M.L.C.)

(9) Deputation from the Agra Province Zamindars' Association (1. Major D. R. Ranjit Singh, O.B.E. [late I.M.S.]. 2. Khan Bahadur Mohammad Obaidurrahman Khan Sahib, M.L.C., 3. Khan Bahadur Maulvi Fasihuddin Sahib, M.L.C., 4. Mir Ali Sajjad Sahib, 5. Raja Kalicharan Sahib Misra, M.L.C.)

(10) Deputation from the United Provinces Zamindars' Association, Muzaffarnagar (1. Lt. Nawab Mohammad Jamshed Ali Khan, M.B.E., M.L.C., President, 2. Major Kunwar Shamsher Bahadur Singh, 3. Khan Bahadur Fasihuddin, M.L.C., 4. Khan Bahadur Fazlurrahman Khan, M.L.C., 5 Shaikh Habibullah Sahib, M.L.C., 6. Rai Bahadur Chaudhri Sher Singh, 7. Rai Bahadur Sahu Ram Sarup, O.B.E., 8. Lala Hari Raj Sarup, M.A., LL.B., Hon. Secy., 9. Syed Ahmed Hasan).

(11) Representative Deputation of the Depressed and Backward Classes (1. Babu Rama Charana, M.L.C., 2. Babu Khem Chand, ex-M.L.C., President, All-India Shri Jatav Mahasabha, Agra, 3. Babu Nanak Chand Dhusya, President, Adi-Hindu Sabha, United Provinces, 4. Munshi Hari Tamta, Member, Distt. and

Municipal Boards, Almora, 5. Bhagat Malluram, Member, Distt. Bd., Fatehpur, and representative of the All-India Adi-Hindu Mahasabha, Cawnpore, 6. Babu Sheo Dayal Chowrasia, B.Sc., LL.B., Chhotwapur, Lucknow, 7. Babu Ram Prasad, Ahir, Pleader, Oudh, 8. Babu Chet Ram, Member, Municipal Board, Allahabad, 9. Babu Raja Ram of Kahar Sudharak Sabha).

(12) Deputation from the British Indian Association (1. Raja Suraj Bakhsh Singh, O.B.E., President, 2. Raja Mohammad Ejazul Rasul Khan, C.S.I., Vice-President, 3. Rana Umanath Baksh Singh, 4. Lieut. Raja Bahadur Bishunnath Saran Singh, 5. Shaikh Mohammad Habibullah, O.B.E., 6. Raja Shankar Sahay of Maurawan, 7. Lala Prag Narayan of Maurawan, 8. Thakur Ram Partab Singh).

(13) Deputation from the Upper India Chamber of Commerce (1. Mr. A. L. Carnegie, President, 2. Mr. T. S. Gavin Jones, M.L.A., 3. Mr. E. M. Souter, M.L.C., 4. Mr. J. G. Ryan, M.B.E., Secretary).

(14) Kunwar Jagdish Prasad, C.I.E., O.B.E., I.C.S., Chief Secretary to Government, United Provinces.

(15) The Home and Finance Members, United Provinces. (The Hon'ble Captain Nawab Sir Muhammad Ahmad Sa'id Khan, K.C.I.E., M.B.E., and the Hon'ble Mr. G. B. Lambert, C.S.I., I.C.S.). *In camera.*

(16) The Ministers, United Provinces. [(1) The Hon'ble Nawab Muhammad Yusuf, Bar.-at-Law, Minister for Local Self-Government, (2) the Hon'ble Maharaj Kumar Major Mahijit Singh, Minister for Agriculture, and (3) the Hon'ble Raja Bahadur Kushalpal Singh, Minister for Education.] *In camera.*

(C) OTHER RECORDS OF EVIDENCE THAT WERE SUPPLIED TO THE COMMITTEE.

(1) Deputation of Anglo-Indian and Domiciled European Association ... (Delhi -0-5).

(2) Deputation of Indian Christians ... (Delhi -0-6).

(3) Deputation of the Country League ... (Ben. -0-4).

(4) Deputation from the All-India Association of European Government Servants ... ... (Ben. -0-6).

(5) Deputation from the Associated Chambers of Commerce of India and Ceylon ... ... (Ben. -0-9 0-10).

(6) Deputation from the European Association ... ... (Ben. -0-10).

(D) SOME *Notes*.

(1) Note by the Chairman of the Indian Statutory Commission as Chairman of a Sub-Committee of Joint Free Conference, Lahore, on Executive and Judicial Powers, held on November, 8 1928.

(2) Note by the Chairman of the Indian Statutory Commission as Chairman of a Sub-Committee of Joint Free Conference, Lucknow, on the definition of the Depressed and Backward classes held on December 6, 1928.

(3) Note on the Financial Situation by Mr. W. Layton, Financial Adviser to the Indian Statutory Commission.

(4) A short Summary of the Auxiliary Committee on Education (the Hartog Committee) made by Sir Phillip Hartog.

EXPLANATORY NOTE

ON THE

REPORT OF THE COMMITTEE

APPOINTED BY THE

U. P. LEGISLATIVE COUNCIL

TO CO-OPERATE WITH THE

INDIAN STATUTORY COMMISSION

BY

DR. SHAFA'AT AHMAD KHAN
LITT. D. (Trinity College, Dublin)
Member, United Provinces Legislative Council

EXPLANATORY NOTE

BY

DR. SHAFA'AT AHMAD KHAN

LITT. D. (Trinity College, Dublin)

Member, U. P. Legislative Council

FOR

The Indian Statutory Commission.

Reasons for the note.

I AM writing this note chiefly because I feel that certain important points have not been fully discussed by the Committee. Such questions, for instance, as the rights of minorities, communal representation, and the position of Muslims in the services demanded a detailed and comprehensive survey. I have, therefore, appended notes on some of the points discussed by the Committee in chapter I; while in chapters II, III and IV, I have dealt with the problem of separate electorate, rights of minorities and services. In such a method repetition is unavoidable.

25, STANLEY ROAD,
ALLAHABAD:
August 8, 1929.

SHAFA'AT AHMAD KHAN.

EXPLANATORY NOTE.

LIST OF CONTENTS.

CHAPTER I.

SUGGESTIONS FOR THE CONSTITUTION OF THE PROVINCIAL GOVERNMENT.

CHAPTER II.

COMMUNAL REPRESENTATION IN THE INDIAN LEGISLATURE.

CHAPTER III.

What are the rights of Minorities?

CHAPTER IV.

United Provinces Muslims and Public Services.

CHAPTER I.

SUGGESTIONS FOR THE CONSTITUTION OF THE PROVINCIAL GOVERNMENT.

(1) Fallacy of comparing India with Canada.

The point to which I would first refer is that analogies are constantly made between the condition of India and that of Canada. Such analogies are misleading for two reasons: (1) The first and the most important reason is the difference in the position of the minority and majority communities in Canada and India. In Canada the problem of minorities is very simple. The French possess an overwhelming majority in Quebec, while the English and other races have an overwhelming majority in Ontario. The question of the relation of minority and majority communities is consequently simplified by the concentration of each of the two communities in Quebec and Ontario respectively. Section 93 of the British North America Act, 1867, has solved the problem of minorities in Canada, mainly because the latter inhabit different provinces, and each province enjoys provincial autonomy. The minority in Quebec is in a majority in Ontario, and *vice versa*. The supremacy of the French race in Quebec is ensured by the form of the government conferred on Canada by the Act of 1867. The federal government established under the Act has safeguarded the French minority by giving it provincial autonomy in the Quebec province. Any-one who knows the history of Canada in the years preceding its confederation in 1867, and has followed the debates of the period, will be forced to confess that the problem was solved only after the claims of the minorities had been equitably adjusted. It is important to note that the union of Canada has not brought about racial, religious, linguistic or cultural absorption of the two races. Professor G. M. Wrong, one of the greatest living authorities on Canadian history, has remarked: "The final solution," of the Canadian problem, "was to be found neither in isolation nor in complete union, but rather in both union and separation—union in the great affairs which touch trade, tariffs, public services, like the Post Office and the administration of justice; separation in respect to those things in which the two races had differing ideals, e.g., religion and education." The language question, as well as the education question, in Canada have produced acute controversies there. The following quotation from Professor J. Russel Smith's *North America* will show that the social and cultural outlook of the two races is different. "Four-fifths of the people of Ontario are British, while those of Quebec are four-fifths French, and the races are growing further apart, thus proving the error of the French publicist, De Tocqueville, who visited this region in 1830, and said that the French were 'the wreck of an old people lost in the flood of a new nation.' They have not been lost in the flood. The Government reports of the province of Quebec are published in French and in English. There are two sets of schools, French and English. The French language is deliberately purified

of its Anglicism, and the community is becoming more and more French." Again, "The Quebec French are overcoming the Ontario English by force of numbers. When young Protestant MacGregor comes home from school, using French words, the farm is put up for sale, because of the fear of too much French association. Jacques Mercier buys it. Thus whole townships have passed from one race, one language, one religion to the other, and old Protestant chapels stand in ruins by the roadside. *The misfortune of this is, that the two groups keep up the friction and the separateness, instead of mingling and rubbing along together as the members of the various churches do in England and the United States.*"

The history of the relation of the Boers with the English during the last 28 years, and the insistence of the Boers on the maintenance of their culture, language and education, shows that this problem is no less acute in South Africa than in India. The controversy over the Afrikaans language is a vivid expression of the cultural differences of the two races. Here again any analogy between the two will be misleading. It is impossible to compare the problem of minorities in India with the problem of the relation of the two white races in South Africa without exposing ourselves to the charge of exaggeration. In India it is infinitely complex, and the breadth, volume and depth of the differences that cut right across the ideals of all Indian patriots for a United India are immeasurably greater.

(2) Comparison with other parts of the Empire.

There is also another difference which marks the Indian problem completely off from any problem with which the British Parliament has ever been faced. The nearest parallel to it is to be found in the relation of the Catholics to the Protestants in Ireland, though even in the latter the differences are not so great. Both in Canada and in Ireland there are not two religions, but one, and the differences are among the followers of the particular sects of the same religion. It has to be borne in mind that religion in Europe does not imply a different mode of life. In India religion is expressed in a distinctive mode of life, with the result that socially there is a deep gulf among the followers of different religions. There is no mingling of communities, races and creeds, as the followers of one religion cannot dine or inter-marry with those of the other. Religious differences would have been softened, mellowed, and practically eradicated, had there been free, unrestrained and frank intercourse among communities, classes, races and creeds of India. Unfortunately, custom, rules of caste, usage and religious tenets do not allow this. Orthodoxy has, no doubt, diminished, but it will be true to say that with the exception of a handful of persons concentrated in the urban areas, the bulk of the members of the various communities do not mix much in private life. The Hindus and Muhammadans cannot inter-dine or inter-marry. This lack of social solidarity makes it extremely difficult for members of various communities to arrive at a point which will enable them ultimately to merge themselves socially, and to evolve a new culture with distinctive features of its own.

This is another important factor which differentiates the problem of minority in India from that presented by any part of the British Empire. I hope and believe that in the solution of this problem the British Parliament will not be misled by false analogies instituted between India and other parts of the British Empire.

(3) Lack of propaganda among Indian Muslims—Its effect.

There is another very serious disadvantage under which my community labours at the present time. It is the lack of any effective organisation which will make its political programme known to the British elector. While the majority community possesses extremely able, influential and popular political associations in every province throughout British India; while it is organised with a definite purpose and possesses experienced and influential workers, my community is handicapped by the lack of financial resources, public workers, and experienced men. The chief reason for this is that it is only lately that the Muhammadans have begun to take an active interest in politics. With the problem of propaganda is intimately connected the problem of publicity. In this, too, also the Indian Muslims are deficient. While the majority community possesses many influential daily papers in English in every province, the Muhammadan community is destitute of a single powerful daily paper in English. New Zealand with a population of about a million inhabitants boasts of 63 daily papers; my community with a population of 68 millions has not got a single influential daily in English. The result is that Muslim views are not given publicity, and the Muslim case sometimes goes by default. Propaganda is the soul of modern politics. My community has not yet realised its importance. Before I deal with the constitution proper, I may mention that I have dealt separately with some of the problems which are incidentally referred to in this chapter, in separate chapters. They are numbered chapters II to IV, and form an integral part of this note. I thought it necessary to deal with the important problems connected with Services, Separate Electorate and the Rights of Minorities separately.

(4) The Cabinet. The Governor and the Cabinet. Need for stable ministries.

I would like to amplify the points dealt in paragraph 64 of the Committee's report. It should be clearly understood that it is impossible to transplant every feature of this system to India. The basic principle of the parliamentary system is the responsibility of the Executive to the Legislature. With this principle I am in general agreement. The British Parliament is committed to it, and the English Parliament must be the model for all the Parliaments of the Empire. I need not go into the question whether Lord Curzon, when he coined the expression "responsible government in India" (*Life of Lord Curzon*, by Ronaldshay, volume III, *pages* 167—176) was conscious of the implications of this phrase when he used it in 1917, nor need I analyse it. I use the word "responsible government" in the sense in which it was used in the Dominions before the Imperial Conference of 1926. Using it in this

sense, I have no hesitation in stating that the parliamentary system which is in operation in England and other countries must be modified before it can be applied to India. The logical result of the consistent application of the principle of parliamentary system to the varied, complex and complicated condition of Indian provinces would be that the majority would rule the minority. My own experience and the experience of all persons in India is that unless safeguards are provided for the representation of the Muslim minority in every Cabinet, there is a probability of the Muslims being completely unrepresented in the administration. I may remind you that India is not the only country which is faced by this problem. In Canada, before the British North America Act, 1867, the Cabinet consisted of two wings, the French and the English. Each wing had its own leader, though, of course, there was one Prime Minister, whom the leader of the French wing of the Cabinet generally followed. At the present time the principle of representation of each part of Canada has been recognised as valid, and is consistently followed. Thus the first ministry of thirteen members in 1867 comprised five from Ontario, four from Quebec, one representing the English-speaking population, and two each from Nova Scotia and New Brunswick. The problem in Canada is now more difficult, for the increase in the number of provinces renders it less easy to satisfy claims; what is essential is that Ontario, Quebec, the Maritime Provinces, and the West should all be made to feel that they are not being pushed over. In Switzerland precisely the same practice is observed. I may be allowed to quote the following from Lord Bryce's *Modern Democracies*: "Though in nearly every canton of Switzerland one or more representatives of the minority or minorities find their way on to the Executive Council, despite the fact that the vote is taken by a 'general ticket' over the whole canton, still, in order to ensure the representation of minorities, several cantons have adopted systems of proportional representation, for everybody feels that each important section should have its spokesman and its share of office." As regards the Federal Executive Council, Bryce informs us, "custom prescribes that one councillor shall always come from Bern, and another from Zurich; one is usually chosen from the important French-speaking centre from Vaud; one is again, by custom, taken from a Roman Catholic canton, and very often one from the Italian-speaking Ticino. In this way, all races and religions of Switzerland are represented." The view that each important section should have its spokesman and its share of office is expressly recognised in the constitutions of Bern and Aargau. In Czechoslovakia, the German minority is effectively represented in the Cabinet. The views of the founder of the Czechoslovakian Republic, President T. G. Masaryk, on this point are significant. He says in *The Making of the State*, "At the Geneva Conference between the delegates of the Prague National Committee a proposal was adopted without discussion as something self-evident, that a German Minister should be included in the Government. *In a democracy it is obviously the right of every party to share in the administration of the State, as long as it recognises the policy of the State, and the State itself. Nay, it is its duty to share it.*" In Roumania, after a systematic repression of the Transylvanian minority, and the complete

failure of the policy of repression, the representatives of the Transylvanians were invited to join, and have actually joined, the Roumanian Cabinet. In Jugo-Slavia, the working of the parliamentary machinery revealed so many glaring defects, and the Croatian minority was subjected to ill-treatment to such an extent, that the constitution was suspended. India ought to take a lesson from these examples. I deem the representation of Muslims in the Cabinet to be absolutely necessary to the success of any constitution. The amount of their representation should in no case be less than 33 per cent.

I am of the opinion that the pay of the Ministers should be fixed by an Act of the local Legislature. The total number of Ministers should not exceed seven in any province. This is provided for by Act No. 3180 (1921) of Victoria, Act No. 1492 of South Australia, and the Civil List Act No. 31 of New Zealand, which fix the pay of the Prime Minister, as well as of other Ministers. Reference may also be made to Ministers and Secretaries' Act No. 16 (1924) of the Irish Free State. The Central Provinces Legislative Council reduced the salary of the Ministers to the magnificent sum of Rs. 2 per year; in the United Provinces Legislative Council a motion was made on March 19, 1929 by a non-official member to reduce the salary of the Ministers to Rs. 1,000 a month. The pay of the Ministers in these provinces has varied. The Ministers appointed in 1920 received the same pay as that received by Executive Councillors. The landlord Ministry which succeeded them voluntarily accepted the pay of Rs. 3,000 a month. I am of the opinion that there should be statutory provision for the pay of all Ministers. The Chief Minister should receive Rs. 4,000 a month, while other Ministers should be paid Rs. 3,500 a month. The fixation of the pay of the Ministers by a statute of the local Legislature will not prevent a motion being brought against them. But it will be a token motion, say of Re. 1, or more to express the want of confidence in the Ministry. I am of the opinion that the maximum number of Ministers should also be fixed by law. Unless this is done, there is a great danger of an enormous increase in the number of Ministers in each province. This will produce extravagance, corruption, jobbery, and log-rolling. Ministers will multiply, new posts will be created to pacify partisans, and the province will be saddled with a species of Byzantine officialdom.

Constituencies.

I am strongly of the opinion that the Parliament should make provision for the appointment of a Committee for the purpose of reorganising the constituencies for the local and central Legislatures. In the case of the Union of South Africa, a Commission was appointed after the passage of the Act of 1909, while in the case of the Government of India Act of 1919, the recommendations of the Franchise Committee were considered by the Joint Select Committee of the British Parliament, before the passing of the Bill into law. I recommend that the same procedure should be followed, and a Joint Select Committee should consider the report of the proposed Committee before the passing of the Government of India Bill into law.

The Committee appointed for the purpose should be directed to give due consideration in their recommendations for reorganisation of constituencies to the following factors :—

(*a*) community or diversity of interests ;
(*b*) means of communications ;
(*c*) physical features ;
(*d*) existing electoral boundaries ;
(*e*) sparsity or density of population.

(5) The Voters in the United Provinces.

The Franchise Committee estimated that the general qualifications suggested by them would yield an electorate of 1,483,300 out of a population of male adults over twenty years of age numbering 13,345,757, of whom 1,186,973 were returned as literate. The number of electors to the pre-reform Legislative Council was only 2,774, of whom 2,306 were Muhammadans and landholders, who returned six members by direct election, and the remaining 468 were members of district and municipal boards who returned thirteen.

In order that such a system may be effective, in order that the Legislature should not merely nominally, but also actually, represent the public view, it is essential that the members of the Legislature should be kept in frequent and constant touch with their constituencies. Only then can a Legislature be said to mirror public opinion. This is not possible if members are prevented from direct, personal, intimate and constant intercourse with their electors, owing to the great, and, sometimes, insuperable barrier of distance. The Legislature, in that case, will be cut off from the stream of popular thought and popular feeling, and will be likely to reflect opinions, and express a policy, which may be in violent conflict with popular needs and national aspiration. I suggest the following principles for the reorganisation of constituencies :—

(1) they should be as small in size as is consistent with the number of members for the Legislative Council given below ;
(2) they should be homogeneous, and local tradition, local feeling and local needs should be carefully considered before two or three districts are grouped into a constituency ;
(3) the number of electors should be, as far as possible, uniform. This is, I admit, not always possible in the case of Muslim constituencies, as Muslim population in the hilly districts and in some of the eastern districts of these provinces is very sparse. Every effort should, however, be made to apply these principles.

(6) The Landlords.

I would like to emphasise the need for the representation of landlords in the Legislature. I am strongly of the opinion that landlords should be given increased representation in the new constitution. I recommend that of these, eight should be elected by the British Indian Association, two by the Muzaffarnagar Association, and six by the

United Provinces Zemindars' Association. I believe this number to be both reasonable and necessary, as the landlords have played, and I am convinced they will continue to play, a very important part in the public economy of these provinces. The landed interest imparts an element of stability and steadiness to the constitution. The landlords of these provinces have been foremost in all the movements for the educational, social and economic development of these provinces. Though the number of landlords in the Council since 1920 has not been small, and several have been elected from general constituencies, a comparison of their total strength in the Councils, for the years 1921—1923, 1924—1926 and 1927-28, will show at a glance that their representation has steadily diminished. There is no guarantee that any zemindar will be returned in future from general constituencies, as a very serious situation may develop in the countryside among the rural masses at any time. An agrarian movement may sweep like a whirlwind among the ignorant and illiterate peasantry, and determined efforts might be made for the abolition of private property and the destruction of the zemindari system. That such attempts have been made by certain persons, that the ignorant peasants are sometimes infected with communist doctrines, and that the latter are propagated in many skilful ways, are known to many persons in these provinces. It is true that there is no immediate danger of the rural population being swept off its feet by revolutionary doctrines. It cannot, however, be denied that the danger is by no means imaginary. The landlords will be reduced, then, to a position of utter helplessness, and a Legislature, packed with excited, ignorant and interested tenants, may pass a series of laws with the object, among others, of destroying the entire fabric of the zemindari system of these provinces. The landlords are willing, nay eager, to work for the well-being of their country and for its constitutional advance; and do not view with dismay the coming changes. On the contrary, they welcome them. Before, however, they agree to them, they want an assurance that their interests will be safeguarded. I concur in this view and recommend, as suggested above, that landlords should be given special representation to the extent of 16 persons in the Lower Chamber.

(7) The powers of the Governor.

I would like to amplify paragraphs 60—62 of the report as it is a very important subject. The Governor in the new constitution will play a part which will materially differ, in some respects, from that occupied by him in the past. Some of the powers exercised by him since the Reforms will be used by his Ministers, and as we gain experience, and develop the tradition and discipline of parliamentary governments, he will refrain from interfering in those matters on which the opinion of the country as voiced in the Legislature is unambiguously expressed. He will, in time, occupy a position which the Governors of self-governing colonies occupy. At the present time, and in the immediate future, the Governor cannot, and should not be, a figure-head, who is useful only for ornamental purposes, and active only when Imperial interests are directly involved. Such a conception of the duties and functions of the Governor is bound seriously to affect the

working of the new constitution. As I have pointed out in chapter IV, administration in India occupies, and has occupied, a unique place, and government of these provinces cannot be carried on by a combination of *a priori* ethical principles and facile opportunism.

The Governor will normally act on the advice of his Ministers, who will be responsible to the Legislature for the policy of their respective departments. But he must possess a reserve of power in emergencies. This power should be real, and not nominal. It is possible that a young Governor, who may have his career to make in England, may refuse to take action in a matter which is likely to arouse the hostile comments of a vociferous majority, or the passionate criticism of an interested, narrow, or prejudiced oligarchy. It is no less true that the personality of a Governor will exercise in future, as it has exercised in the past, a decisive influence on the working of the Government. If he is weak, vacillating and flabby; if he wants a quiet time, and is inclined to take the line of the least resistance, he will be under constant pressure to play the opportunist, not for place alone, but from motives of safety and glory. In order to retain his popularity, he will be under the necessity of making sensational "profits", and "quick returns." The slow statesmanship which is necessary for the head of a province will be replaced by a spectacular Byzantism, and the whole administration will be in danger of sudden break-up and explosion like the crust of lava on the crater of a volcano. I do not want the Governor to be a dictator or an autocrat. All that my statement implies is that there must be a co-ordinating and unifying principle in the province, which will work promptly and unambiguously on all critical and emergent occasions. Such a principle is supplied by the Governor. I am strongly of the opinion that the Governor should be invested with adequate powers, which he should exercise in all cases where the safety and tranquillity of the province as a whole are concerned. These important provisions should be put out of the reach of temporary impulses, springing from passion or caprice, and should be regarded as the permanent expression of calm thought and deliberate purpose. These observations are not intended to cast any reflection, or to deprecate the growth of usages and conventions of the constitution, which acquire as great a force as are possessed by the constitution itself. Such conventions and usages are of the essence of parliamentary government; but in India they have not yet been properly developed, and it would be a fatal mistake to deprive the Governor of a power which will maintain our constitutional system with its singular Newtonian equipoise of parts.

I will now amplify these remarks by detailing the powers with which the Governor of this province should be invested: He will, in the first place, use the powers which the Dominion Governors exercise at the present time. The Governor there performs a dual function: (*a*) He is, in the first place, a servant of the Imperial Government, (*b*) in the second place, he is the head of the province. With regard to the latter, the position of the Governor to his Ministers is governed essentially by constitutional practice, rather than by positive law.

Authoritative usage requires that he shall act on the advice of his Ministers. Though he may not act without their advice, he can always refuse to act, and his refusal, whatever its constitutional result, is strictly legal. He can dismiss a Minister who insists on acting, even in his own sphere of authority, contrary to the wishes of the Governor. A number of cases of actual removal of individual Ministers in self-governing colonies are on record. That a Governor has a right to dismiss his Ministers is equally certain. They hold during pleasure, and even in the British dominions the wording of the Instrument of Instructions make it clear that the right of appointing Ministers is vested in him alone. But if Ministers insist on resignation, then the Governor must be prepared, in any case, if he is not acting under Imperial instructions, to find other Ministers who will accept the responsibility for his action in driving the outgoing Ministers to resignation. The Governor's powers with regard to dissolution should be clear and definite. He should have the right to summon and dissolve the Council at any time that he may deem fit.

(8) The Governor as a servant of the Imperial Government.

In the British Dominions, the Governor is not merely the head of the State, and is required not merely to act according to the law, but also subject, of course, to the law, to follow the instructions of the Crown. This appears in the Letters Patent, as well as in his Commission. His duty as the head of a responsible government in the Dominion must be reconciled to his duty as a servant of the Imperial Government. A Governor is thus limited in action, even if Ministers advise it by certain definite considerations. He must obey his instructions as to the exercise of prerogative of mercy, the disallowance or reservation of Bills, and any other matters on which he may receive orders from the Crown. He is entitled to receive aid from his Ministers in obeying these instructions. Normally the ministry should accept the constitutional rule that, if a Governor acts on Imperial instructions, its duty is to acquiesce in his action and merely concentrate on seeking to have the instructions reversed. Again, a considerable number of duties are imposed on the Governors under Imperial Acts. In these matters the Governors can legally act on their own authority. In some cases, however, powers are given to a Governor quite distinct from those he has in his former capacity, in order that he may exercise them without being under ministerial control, in such a manner as to promote harmony between the interests of the Dominions and other matters for which he is responsible.

This is, very briefly, the position of the Governor in self-governing Dominions. It is clear that the Governor of an Indian Province must possess all the powers which the Dominion Governors enjoy at the present day. It is, however, no less clear that a Governor of these provinces needs greater powers, as he shoulders heavier reponsibilities than his compeer in Canada. At present the Governor may require action to be taken, under section 52(3) of the Government of India Act of 1919, otherwise than in accordance with the advice of his Ministers, if he sees sufficient

cause to dissent from their opinion. Further, his Instrument of Instructions lays upon him certain special responsibilities, the discharge of which may require him to dissent from his Ministers. Article 7 of the Instrument of Instructions specifies the matters in regard to which the Governor would be empowered to intervene. They are :—

(1) maintenance of the safety and tranquillity of the province, and the prevention of religious or racial conflicts ;

(2) the advancement and welfare of backward classes ;

(3) impartial treatment and protection of the diverse interests of, or arising from, race, religion, social conditions, wealth or any other circumstances,

(4) protection of the public services ;

(5) prevention of *monopolies* or special privileges against matters affecting commercial or industrial interests.

In the sphere of legislation, the Governor is empowered under section 72(*e*)(I) to certify that the passage of a Bill is essential for the discharge of his responsibility for a reserved subject and thereupon the Bill becomes an Act under the signature of the Governor. I would modify this section allowing the Governor to certify the passage of a Bill, if he thinks it essential to the safety and tranquillity or financial stability of the province. I give below those sections dealing with the power of the Governor, which, in my opinion, should be maintained in the future constitution of India:—Sections 49(1); 72(A)(1); 72(B)(*a*); 72(B)(*b*); 72(B)(*c*) 72(B)(2); 72(D)(2)(6); 72(D)(2)(*c*); 72(D)(4); 72(E)(1); 81, and 81(A). Provision should be made by statute empowering the Governor to perform the duties included in provisions (1) to (5) detailed above, which are taken from article 7 of Governor's Instrument of Instructions. The following provision should be added :— "The Governor should be empowered to intervene for the maintenance of financial stability and adherence to canons of financial propriety." Item (3) dealing with the impartial treatment and protection of diverse interests, mentioned above, should also include a power to secure adequate representation of various communities in the administrative services. The Governor should also be empowered to take over the administration of the province in the event of a deadlock arising. As regards his powers to certify legislation, the Governor should have the power to certify legislation, similar to that as at present vested in him under section 72(*e*) of the Government of India Act, but extending to all subjects, provided the legislation is essential for the safety, tranquillity or financial stability of the province. The Governor would also retain his existing power of giving or refusing assent to Provincial Acts. The Governor-General must also have some power of control over Provincial legislation on the lines of the power conferred by section 80A of the Government of India Act, but such control would be limited as narrowly as possible. Under the existing constitution, the exercise of the powers of superintendence,

direction and control vested in the Secretary of State in Council and the Government of India has, so far as transferred subjects are concerned, been limited by statutory rules to the following purposes:—

(1) to safeguard the administration of central subjects;

(2) to decide questions arising between two provinces;

(3) to safeguard Imperial interests;

(4) to determine inter-Imperial questions;

(5) (*a*) to deal with questions relating to the High Commissioner for India;

(*b*) to control borrowing by Local Government;

(*c*) to control the civil services in India; and

(*d*) to secure the exercise and performance of powers and duties under statutory rules.

Of these purposes Nos. (1) to (5) (*b*) result from the nature of the constitution, and the power of control connected with them are such as are inherent in the position of a subordinate member of a federal constitution. They would be retained, and as all subjects would be transferred, would extend to all subjects. Control in matters affecting the all-India services must be retained so long as any such services are retained.

In the financial sphere the control of the Secretary of State in Council over expenditure would be strictly limited. The Government of India would also retain some control over provincial borrowing and taxation. The principle of votable and non-votable expenditure would be embodied in the statute to the extent of creating certain permanent changes on the lines of the consolidated fund in England. These would include the contribution to the Central Government interest and sinking fund charges, expenditure prescribed by or under any law, and the salaries, pensions and allowances of certain persons, including salaries, etc., of persons holding posts borne on the cadre of the all-India services at the time of the introduction of the Act. The Act would contain specific provisions requiring the disbursement of charges on the consolidated fund, and would give the Governor power to certify expenditure necessary for the safety or tranquillity of the province or for the carrying on of any department. In addition to these powers, the Governor as agent of the British Parliament should be entrusted with the duty, in my opinion the supreme duty, of seeing that the safeguards for minorities are faithfully and effectively carried out. As is explained in the chapter dealing with safeguards, the Governor of the Province will act merely as an agent of the British Parliament as far as the protection of minorities is concerned. The principles of these safeguards will be enunciated in a statute of the Imperial Parliament. The proper authority in matters relating to India for the execution of the statutory safeguards is the Secretary of State for India. He is the Minister in charge of Indian affairs and is responsible to the British Parliament for Indian administration. He will, therefore, be primarily responsible for their due fulfilment. It is clear, however, that he cannot, at a distance of 6,000 miles, execute

such a provision without the employment of a special agency for the purpose. Such an agency is quite impracticable under the existing circumstances. It would be inexpedient and expensive, and might produce friction between the authorities in India and the Secretary of State.

I therefore think that the Secretary of State should be empowered to delegate the power of making rules to the Governor-General for the due application of the principles of safeguards embodied in a parliamentary statute. The Governor-General will then frame rules, and may call upon every Governor to carry out these rules in each province. It will be, therefore, one of the most important functions of the Governor to see that the rules framed for the execution of these safeguards are duly observed. I may add that, if necessary, the Secretary of State may himself frame such rules after making such enquiries as he may deem necessary and may ask the Government of India to enforce them. The Government of India may in their turn use the agency of the Local Government for their due execution.

Another question of very great importance is the manner in which the rights and duties of the Governor should be defined. Should they be incorporated in an Instrument of Instructions, or should they be embodied in the statute itself? I attach very great importance to this point. The history of some of the self-governing colonies shows that the Instruments of Instructions to Governors have formed the subject of acute controversy on some notable occasions. I need only refer to the views of Mr. Higginbotham and of Mr. E. Blake, analysed in chapter III of Keith's *Responsible Government in the Dominions* (Edition 1928). I am strongly of the opinion that the powers and duties of the Governor, detailed above, should be embodied in a statute.

The Instrument of Instructions does not possess any sanction, and is, for all practical purposes, useless. The Governor will be in a most delicate position, if he is called upon to take action on a matter in respect of which his powers are vague and undefined. On the other hand, a statutory provision to this effect will greatly strengthen his hands; it will be a duty imposed upon him by law which a weak or vacillating Governor will be compelled to discharge. If, on the other hand, vague, barren, ethereal generalisations, which may be mere platitudes, are sandwiched in the Instrument of Instructions, the Governor would be hampered at every turn. He may indeed be exposed to the attack which Mr. Higginbotham, Chief Justice of Victoria, launched against Letters Patent and Instructions to Governors. He argued that the creation of responsible government meant "the vesting in the representative of the Crown upon his appointment, and by virtue of the statute, of all powers and prerogatives of the Crown necessary in all the conduct of local affairs and the administration of law." He contended that these prerogatives and powers are no longer vested in the Sovereign but transferred to the Governor, and there was no power in the Crown by Letters Patent apart from the statute to confer on the Governor any powers in regard to internal government. The powers which a Governor derived from the statute were, Mr. Higginbotham contended, only exercisable by him on the

advice of Ministers precisely as in the United Kingdom, and no outside interference was permissible. The barrenness of the Instrument of Instructions was, indeed, made clear by a reply given by Sir William Marris, the then Governor of the United Provinces, to a deputation of the United Provinces Muslims which waited upon him at Agra in August, 1924. The deputation asked him to protect the education of Muslims and made a request for an increase in the grants-in-aid to Muslim institutions, etc. The reply of Sir William Marris showed how ineffective the Instrument of Government is, so far as the protection of minorities is concerned: "I note that you refer to a certain clause in the Governor's Instrument of Instructions; but I would not have it interpreted as constraining the Governor to adopt your proposals. *The Instrument has to be read as a whole, and in the light of the existing constitution, by which education is a transferred subject, and its administration is in the long run controlled by the Legislature. It is for you to do what you can to get your views accepted by discussion, argument, and advocacy in the Legislature.*" If this is so, then paragraph 7 of the Instrument of Instructions which was designed to safeguard the interests of minorities and other interests is worthless. It may be said in reply that the law of Principal and Agent applies to the Instrument of Instructions to Governors, and as the Crown, who is the Principal in this case, and delegates his power to his agent, the Governor, undoubtedly possesses large and substantial powers, his agent, the Governor, will exercise them on his behalf, and in his name. It is consequently argued that as the Instrument of Instructions is issued by the Crown to the Governor, the latter is invested by the Crown with all his powers for the purpose of enforcing the provisions of the Instrument. To this it may be replied that these powers are of two kinds:—Those which he exercises as a servant of the Imperial Government, and those which he exercises as head of the province. There is a vital distinction between the two. For when the Governor acts as a representative of the Crown in the internal affairs of the province, most of the powers, privileges and prerogatives of the Crown are generally exercised on the advice of Ministers. Indeed, it may be said that just as the English Cabinet derives most of the powers which it now exercises from the prerogative of the Crown, in the same way the Cabinet in the dominions insist on the prerogative of the Crown being exercised by the Governor on the advice of his Ministers. Therefore, the analogy between the Crown and the Governor on the one side, and the Principal and the Agent on the other, is fallacious. His Ministers may, and sometimes do, take a strong exception to his acting on the Instrument of Instructions on the ground that the latter infringe the deliberate and well-considered policy of responsible government. The law courts may also question the legality of his action, and a very serious situation might be created. The Governor will then be placed in a very delicate situation. For these reasons, I am of the opinion that the powers of the Governor should be defined in the statute. The Instrument of Instructions will, of course, be issued to all Governors, but it will be concerned mainly with their duties as servants of the Imperial Government, and other matters of routine. It will not impose obligations on the Governor (as the Instrument of Instructions does now) which they can not

consistently and legally discharge without infringing the statute itself. It may be replied that such an event has not occurred, and cannot occur. My reply is that the draft of the Instrument of Instructions, originally framed by the Franchise Committee, contained a clause in which the Governors were expected to protect Muslim education. This clause was whittled down into paragraph 7 of the Instrument of Instructions which is now in operation, while the paragraph itself was explained away as it could not be enforced apart from the general policy underlying the Act of 1920. If this is the position, the sooner the rights and duties of Governors on the question of protection of minorities and other interests are embodied in a statute, the better it would be for the safety of the administration, and for the tranquillity and contentment of minorities of religion, race and interests in India.

This point was raised by me in connexion with the evidence of Mr. T. Sloan, I.C.S., Special Reforms Officer, United Provinces, before the Joint Free Conference at Lucknow, on December 4, 1928.

On that occasion, the Chairman of the Indian Statutory Commission, Rt. Hon'ble Sir John Simon, remarked as follows:—"If you want some effective restriction against what I would call discriminatory legislation (may be for Muslims, may be for depressed classes, or for any other community) I should have thought that it was difficult to get a water-tight scheme by simply putting these directions into the Instrument of Instructions to the Governor who would never be able to restrain the Legislature from passing such legislation. Therefore, if you want to restrain certain kinds of discriminatory legislation, you have, I think, to consider other means .... But I do not myself think that the Instrument of Instructions to Governors would be found in itself to be an absolutely certain protection, because it is difficult to reconcile the claims of the Legislature to carry through its policy, with the duty of the Governor to do all he can to protect minorities."

Dr. Shafa'at Ahmad Khan: "My point was this, that the Instrument of Instructions will be practically useless unless and until the relevant section is embodied in a statute."

Chairman (Rt. Hon'ble Sir John Simon): "I follow your point. However carefully the Governor exercises his influence, and however faithfully he endeavours to carry out his instructions, still your view is that the citizen is not really assured of having any protection."

The extract quoted above is reproduced from the proceedings of the Joint Free Conference. This makes it perfectly clear that the Instrument of Instructions, by itself to the Governor does not, and cannot, protect minorities effectively.

(9) The Amendment of the Constitution.

A very important question connected with the new constitution is that of the amendment of the constitution. Should the new constitution of India contain some provision for its automatic amendment without further reference to the British Parliament? The Imperial Parliament, as Sir

John Marriott points out, "affords the classical example of an omnipotent Legislature. Legally, there are no limits to its competence : there is no tax which it cannot impose : no law which it cannot enact, repeal or amend ; no act of the administration which it cannot investigate, and, if need be, censure. Its functions are therefore at once constituent and legislative, and it is charged with the duty of criticism and control of the Executive. Not only can it make laws without reference to the electorate, whence in a political sense it derives its powers, but it can profoundly modify, and indeed revolutionize the constitution itself." Some limits have, however, been invariably imposed upon the legal competence and activity of the Legislatures of those countries which possess a written constitution. Such limitations are in some cases imposed by an Instrument or constitutional code, in others by organic laws, in some by a rigid adherence to the doctrine of separation of powers, by assigning precise functions to the Executive and to the Judiciary, in others by reserving certain powers and functions to the electorate. The new constitutions of Modern Europe have been very careful to provide, in some cases with meticulous precision, against any alteration of the constitution itself by the ordinary operation of the legislative machinery. For the amendment of the Federal constitution of the United States, changes may be proposed at the instance of two-thirds of the members of both Houses of Congress, or by two-thirds of the State Legislatures, but they cannot become law until they have been ratified either by at least three-fourths of the State Legislatures, or by an equal number of conventions specially summoned for the purpose in each station. Even more elaborate are the laws which govern the process of constitutional amendment in the Helvetic Republic. This principle has been applied to the British Dominions and the Colonial Laws Validity Act, section 5 of 1865, provides that " every representative of Legislature shall in respect to the colony under its jurisdiction have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers and procedure of such Legislature, provided that such laws shall have been passed in such manner and form as may from time to time be recognised by any Act of Parliament, letters patent, orders in Council, or colonial law for the time being in force in the said colony." It is necessary to point out that this power is confined to representative Legislatives ; in other cases it must be derived from express authorisation. This right has been exercised by many self-governing dominions, and several states in Australia have made regulations for the purpose. New South Wales insisted on a two-third majority on the second and the third reading of a Bill for the alteration of the constitution of the Upper House, and a two-third majority in the Assembly for a change in it, but having omitted to safeguard the clauses enacting the rule, they were repealed in 1857. Similar requirements as to absolute majorities on the two readings are contained in the constitution of Victoria. The Act of 1857 (20 and 21 Victoria, C 53) relating to New Zealand expressly conferred on the general Assembly the right to alter save certain specified provisions of the original Act. The Irish Free State constitution can be amended by the Irish Parliament, subject always to the terms of the Treaty of 1921 with the United Kingdom. No such

amendment, however, passed by the two Houses after the expiration of eight years from 6th December of 1922 shall become law unless after passing the two Houses, or being deemed under the constitution to have passed them both, it is submitted to a referendum and a majority of the voters on the register, or a two-thirds majority of the votes recorded are cast in favour of the amendment. Under the Australian Commonwealth Act of 1900, every proposed amendment of the constitution must be passed by both Houses of the Federal Legislature, or it must be passed by one of the two Houses twice with an interval of not less than three months. After this a referendum must be taken on it, and it must be approved by a majority of voters in the Commonwealth as a whole and by a majority of votes in each State. A very important proviso is added that the representation of any State cannot be altered without its own assent. This is of special significance to India, as the principle may be extended not only to provinces, but also to the representation of various interests and communities, and it may be laid down that no alteration affecting any community or any special interest, such as the landed interest, shall be effective until and unless that community or interest gives up the right it enjoys under the constitution of its own accord in any manner that may be specified in the Act. The Union of South Africa Act, 1909, makes a definite provision for the alteration of the constitution. Section 152 declares that the Parliament may by law repeal or alter any of the provisions of the Act, provided that no provision thereof for the operation of which a definite time is prescribed shall during such periods be repealed or altered. The British North America Act (1867) does not, however, provide for the alteration of the constitution. This is due mainly to the fact that the French minority inhabiting mainly the province of Quebec is suspicious of any change which might disturb the proportion of French electors to other electors, and may thus reduce the amount of its representation in the Federal Legislatures. This proportion is laid down in the constitution. Section 51 provides that:—

(1) Quebec shall have the fixed number of sixty-five members.

(2) There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained). These provisions show clearly that the French minority in Canada which is concentrated in the Quebec provinces has been secured effective representation in the Quebec Legislature, which it dominates, as well as in the Federal Legislature in which it exercises effective influence. It is consequently averse to any provision in the constitution whereby its position may be adversely affected.

I am in favour of a provision in the statute giving power to Indian Legislatures to alter their constitutions in the following manner. I am aware of the fact that this power is liable to abuse, nor can I ignore the risks to which important and powerful classes, communities and interests will be exposed if Legislatures in India are invested with it without

proper safeguards. A majority determined upon having its own way and intent upon removing all obstacles to its policy, may manipulate elections and Legislatures in such a way as to force the hands of representatives of diverse interests and communities, and may make them agree to changes in the constitution whereby their economic, political and social condition may be seriously affected. The delicate poise of the constitution, with its checks and balances, may be so violently disturbed that there is a possibility of a social and political upheaval resulting in permanent injury to the interests of India as a whole which might retard the progress of this country towards Dominion Status. I am a strong advocate of the theory of minimum interference by the British Parliament in the domestic affairs of India. I feel that India should be allowed to stand on her own legs, and to work out her destiny along the path marked out by her past traditions and present development. It is, however, necessary to bear in mind that nothing should be done by any Legislature in India which has the effect, direct or indirect, of limiting, abridging or withdrawing the privileges and rights of minorities of religion and interests, without the consent of the latter. While I am not opposed to a provision in the constitution whereby Legislatures in India will be allowed to alter their constitution, I am strongly of the opinion that such changes should not be allowed until the following conditions are fulfilled :—

(1) All changes in the constitution affecting any minority or special interest should be approved by a two-thirds majority of both Houses of Legislature, and this majority must include three-fourths of the total number of representatives of communities and classes, such as Muslims and zamindars, etc., affected by the changes proposed.

(2) This must be followed by referendum on the issue and must be passed by a majority of voters of the community affected by the change proposed.

(3) Thirdly, the Indian Legislature should be prohibited from dealing with the provision relating to the power of the Governor, and other matters pertaining to the maintenance of his position as a servant of the Imperial Government. Again, provisions defining the position of the Secretary of State *vis-à-vis* the Government of India and other matters affecting the British Empire, the rights of the Crown or the Indian States, will not be altered by any Legislature in India, without their consent.

(10) The methods whereby these safeguards should be carried into effect.

I agree with the safeguards as embodied in the report. Here I would like to indicate the method by which they should be enforced. The methods employed for this purpose are varied. The new constitutions of Europe, such as the Czechoslovakian constitution, lay down fundamental

principles in their constitution, and apply them to the concrete details of national life by the provision of special laws. For instance, article 129 of the Czechoslovakian constitution provides that " the principles upon which the rights of languages in which the Czechoslovak Republic shall be based, shall be determined by a special law which shall form a part of the constitutional Charter." Article 133 provides that "the application of the principles of Articles 131 and 132 " which deal with the language of, and grants-in-aid to, minorities, " shall be provided for by special legislation." The Czechoslovakian Republic carried out this promise by a law passed on February 29, 1920. The Kingdom of Hungary applied the same principles by issuing a decree on August 21, 1919, for the effectual protection of its linguistic, racial and religious minorities. I do not desire, as I know that it is impossible, to put every minute detail of these safeguards in the new constitution. All that I desire is that the principles underlying the safeguards should be incorporated in a parliamentary statute. I may refer you for an example of this to Section 96B(2) of the Government of India Act, which authorizes the Secretary of State in Council " to make rules for regulating the classification of the Civil Services in India, to the method of their recruitment, their conditions of service, pay, and allowances, and discipline, and conduct, such rules may, to such extent and in reference to such matters as may be prescribed, delegate the power of making rules to the Governor-General in the Council or to the Local Governments." Under this law the Central as well as the Local Governments have made rules for the representation of Muslims in various services. The method adopted, therefore, would be generally the same, with this difference that the Secretary of State for India should be ultimately responsible for rules that will be framed for the protection of minorities in the various spheres mentioned above. I am strongly of the opinion that the power of enforcing such rules should not be delegated to the Central or Local Government, but to the Governor-General or to the Governor.

The Government of India Act of 1919 is remarkable for the amount of rule-making powers it confers on various bodies, and it would not be a departure from the practice which has been consistently followed so far to enunciate the principle of safeguards in a parliamentary statute. The examples cited above show that the safeguards have been embodied in the fundamental instrument of the Government, viz. the constitution, and if they have been incorporated in ten constitutions of Europe, there is no reason why the principles of these safeguards should not be expressed in a section of Indian constitution. I am convinced that they can be worked; I am no less convinced that unless the minority communities are guaranteed these rights the constitution will not be acceptable to them, and the object of all Governments; viz. the contentment and happiness of *all* sections of the population, will be frustrated.

(11) Objections to safeguards.

The principal objection that has been raised so far to safeguards is that they cannot be drafted and incorporated in a parliamentary statute. To

this the reply is that so far as the existing rights of various classes and communities are concerned, they can be, and have actually been, embodied in the constitutions of various countries. I have already given examples of those countries which have incorporated the minorities clauses, advocated by the League of Nations, in their constitutions. For details, please refer to chapter III dealing with the Rights of Minorities. In it many examples of such clauses are quoted. I give below an example of a clause which can very well be embodied in the Indian constitution. This clause has been suggested by the Bombay Chamber of Commerce and runs as follows:—

"1*st Clause*.—The Indian Legislature has not power to make any law intended or calculated to discriminate against any commercial, industrial or agricultural interests established or to be established in British India by any person or association of persons, whether British subject or not.

' Nothing herein contained shall affect the power of the Indian Legislature to make any law of a discriminatory nature against the subjects of any country, if any law has been passed by the Legislature of such country discriminating against British Indian subjects residing or carrying on business in that country, or the power to impose any duty or duties for the protection of any trade, commerce or industry, agricultural or otherwise in British India."

"2*nd Clause*.—(1) When any question arises in any Court in British India subject to a chartered High Court, as to whether any law made by the Indian Legislature or a Provincial Legislature, was within the power of Legislature, such question shall be referred by such Court to the chartered High Court of the province in which such court is situated.

(2) The Court making the reference shall stay the proceedings in the case until the question is decided by the High Court.

(3) The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall on the receipt thereof proceed to dispose of the case in conformity with the decision of the High Court.

(4) An appeal shall lie to the King in Council from the decision of the High Court.

(4) The High Court shall have the power to make rules regulating the procedure on such reference and other matters relating thereto.

No law, ordinance or other measure shall be made or sanctioned by the Indian Legislature or by any Provincial Legislature or by any Municipality or other Local Authority—

(a) Which discriminates or shall tend to, or is calculated to discriminate as between the race or classes comprising His Imperial Majesty's subjects, and which expressly or impliedly, excluding from amenability thereto others of such subjects, shall operate directly or indirectly to abrogate, restrict, detract from, or adversely affect the status or rights of the members of any

race, creed, community or class or classes or persons, either with regard to their personal liberties, property or contractual rights or otherwise, however, as held and enjoyed by them at the date of the commencement of this Act in common with others of such subjects, or to interfere with the exercise by the members of any class or classes of any profession, calling, or vocation or with the conduct by them of any trade, industry or business upon equal terms in all respects with others of such subjects;

(*b*) to levy any taxation cesses, duties or other imposts of whatsoever nature or kind exclusively upon any person as being the members of any race, creed or class:

Provided that nothing herein contained shall affect the right of the Indian Legislature to take any steps in the interest of public safety or to subsidise or assist any industry or undertaking in pursuance of any existing laws providing for special assistance at the expense of the taxpayer or consumer generally, nor prevent the imposition of such protective duties as may be imposed from time to time by the Government of India.

In any event, the aforesaid restrictions shall not apply to the case of subjects of such countries as have adopted or may hereafter adopt discriminatory measures against subjects of India whether ordinarily resident in those countries or not, or against the import of Indian goods."

(12) Defects of the clause.

It will be seen that in clause (2) the procedure is rather complicated. It is open to the following objections:—

(1) It will involve a very large amount of litigation.

(2) It will be very expensive, and few persons will take advantage of this measure.

(3) It will involve considerable delay in the disposal of suits.

(4) It may also lead to a considerable amount of harrassment to various sections and to the Legislature and other autonomous bodies.

(5) There is another objection to this proposal which is fatal to this proposal. It is this. It will involve constant interference by the courts in the details of administration and in the policy of the Executive. This will lead to very serious friction between the Judiciary and the Executive.

I would suggest the following modifications in this proposal:—

(1) Instead of permitting every person to bring a suit in any court of British India, challenging the power of a Legislature or other bodies, it should be laid down that such suits should be brought only by a certain percentage of the class or community affected by that measure. Let me give an example. If Muslims feel that a municipal board has no right to pass a resolution which is against their religious convictions, and is

also contrary to ancient usage, they should be allowed to bring the suit if one-half of the Muslim electors of that board wish to do so. In the same way, if two-thirds of the Muslim members of a Legislature feel that a certain resolution or bill which is before the House or has been actually passed by it, violates their rights, as recognised by law, they should have the right to bring a suit.

(13) Alternative proposal.

It is admitted by all that machinery of the courts in British India is slow, complicated, cumbersome, and expensive. In place of this proposal, I would suggest that we should follow the same procedure which is followed in other countries. I suggest that a certain percentage of electors of a community or class affected by any legislation, which in the opinion of the minorities violates their rights, should be allowed to petition the Governor, and request him to take action on their representation on the ground that it violates their rights. The Governor, in order to expedite such applications, may require the written opinion of the Judges of the High Court on these applications, or decide the case himself. This method is followed in other countries.

According to Lord Bryce, seven states of the United States of America have empowered the Governor or Legislature of a state to require the written opinion of the judges of higher state courts on points submitted to them. There exists a similar provision in the Statute of 1875, creating a Supreme Court for Canada; while the Home Rule Bill introduced in the House of Commons in 1886, contained section 25, whereby the Lord Lieutenant of Ireland or a Secretary of State was empowered to refer a question for opinion to the Judicial Committee of the Privy Council. In the Home Rule Bill of 1893, this provision reappeared in the modified form of power to obtain, in urgent cases, the opinion of the Judicial Committee of the Privy Council on the constitutionality of an Act passed by the Irish Legislature. According to Article 13 of the new German Constitution, "If there is a doubt or difference of opinion as to whether a provision of a State law is consistent with the Federal law, the competent Federal or State authorities may appeal for a decision to the Supreme Federal Court, in accordance with the more detailed provisions to be prescribed by a Federal law."

Lastly, reference may be made to section 93 of the British North America Act of 1867. Under this Act the minority, if it feels that the provision of the constitution has been violated, may appeal to the Governor in Council. The latter may either decide it himself, or refer it to the Supreme Court for decision. Let me quote the relevant provision from the *Federal and United Constitutions* by Dr. A. P. Newton (Section 4, repealing Section 37, chapter 135, revised statutes, 1886):—

"(1) Important questions of law and fact touching provincial legislation, or the appellate jurisdiction, as to educational matters vested in the Governor in Council by the British North America Act, 1867, or by any other Act or law, or touching the constitutionality

of any legislation of the Parliament of Canada, or touching any other matter with reference to which he sees fit to exercise this power, may be referred, by the Governor in Council, to the Supreme Court for hearing or consideration; and the court shall thereupon hear and consider the same.

(2) The court shall certify to the Governor in Council, for his information, its opinion on questions so referred, with the reasons therefor, which shall be given in like manner as in the case of a judgment upon an appeal to the said court; and any judge who differs from the opinion of the majority shall, in like manner, certify his opinion and his reasons."

I have deemed it necessary to detail these provisions, as I think that the position of the Governor and even of the Governor-General, will be exceedingly difficult, if questions concerning the treatment of minority communities by various elective bodies are frequently raised. I wish to make it perfectly clear that I do not want the Governor to take this responsibility entirely on his shoulders. In cases where injustice is perpetrated by a local body and where the letter of the law is flagrantly violated, it will be the duty of the Governor to take prompt steps, and mete out suitable punishment. I think if the majority of Muslim electors of any self-governing body, or the majority of members of any elective body of a Legislature make a representation regarding the violation of any of these safeguards, or against any measure introduced in such a body, and request the Governor to uphold the law, it should be the duty of the Governor to decide on the question and to declare whether anyone of these safeguards has actually been violated or not. There are various courses open to him. He may, of his own accord, prohibit a recalcitrant body from persisting in its course of folly and injustice; and he *shall*, on the representation of the majority of the Muslim members of a Council, Legislature, or majority of electors of a local or other elective body, as the case may be, take action on any measure which appears to violate any one of the fundamental safeguards. The Governor may, if he deems fit, refer this matter to the full bench of five judges of the High Court of the province for decision. If any local self-governing body is guilty of the violation of these safeguards, it should be suspended or, in extreme cases, dissolved.

There will, therefore, be two methods of redressing the grievance:—

(1) The first method is indicated in the clause mentioned.

(2) The second method I have suggested is in operation in Canada.

The safeguards cannot of course be embodied in their entirety in a statute of the British Parliament. But their principles can be, and have been, embodied and I see no reason why it should not be done in the Indian constitution, specially when the minority communities are emphatically of the opinion that without the safeguards, they will never consent to any re-arrangement of the constitution. Take for instance, section 45 (*a*) of the Government of India Act, which confers power upon the Governor-General in Council for the framing of rules on diverse matters. Again,

take section 96(*b*) (2), which authorises the Secretary of State in Council to make rules for regulating the classification of Civil Services in India, the methods of the recruitment, their conditions of service, pay and allowances and discipline and conduct. Such a provision is sufficient for our purpose. This power has been delegated to the Government of India and also I believe to the Local Government and, it is by virtue of this power that the Government of India nominates members of the minority community to Imperial Services, like the Indian Civil Service; and the United Provinces Government has actually reserved 33 per cent. of the posts for Muslims in the examination for the Provincial Executive Service. Indeed, the British Parliament has frequently passed laws for the protection of the interests of European servants in India. The recommendations of the Lee Commission have been embodied in a statute passed by the British Parliament in 1925. Is is, therefore, unreasonable to say that a subject like this cannot be dealt with by the British Parliament or its principles embodied in a statute. So far as the representation of Muslims in the services is concerned, I shall be prepared to support the retention of section 96B (2), provided rules are made under the section for the representation of Muslims in those services in which they are inadequately represented at the present time, e.g. local bodies and, in fact, every service except the Police Department and the Provincial Executive Service. I may be allowed to quote what I stated before the Joint Free Conference at Lucknow on December 10, 1928 :—

> " I should also like to make it clear that it is not essential that every word of each of these safeguards should be slavishly copied in a parliamentary statute. We know the difficulty of drafting a statute which will contain all the minute details for which we need protection. All that I want to point out is that the principles should be enunciated in the parliamentary statute, and that power should be given by rules that may be framed in accordance with that statute to apply that principle to the various spheres for which we need protection, to education, to services, to local bodies, and so forth. This principle has been in operation in other countries, and the Government of India Act of 1919 conferred rule-making powers on various bodies, the Secretary of State, the Governor-General, and so on, whereby these bodies were empowered to frame rules in consonance with the principles enunciated in that statute. This is precisely the form which we should like the statute to exhibit. So I wanted to make this point clear, because it might be thought that we desired all of our demands to be embodied in precisely the same form. That is not so. We want the principle of those demands to be embodied, and the application to be carried out by the Secretary of State, the Governor-General or the Governor."

I may refer here to another objection. It is said that we must trust our fellowmen, and that safeguards will create mistrust and suspicion. In justification of it, the example of Canada is often cited, where

the French minority in lower Canada is living happily together with the English. This is, I am compelled to say, an entirely incorrect idea of the whole history of Canada in the nineteenth century. Lower Canada, or the French minority at Quebec, is now living happily together, because it has safeguarded its language, education and laws by means of the constitution of 1867. Had the Act of 1867 established a unitary Government, it would most certainly have been opposed and resisted by the French Canadians. Sir John MacDonald, the great Canadian statesman, made this perfectly clear in the Canadian Legislative Assembly on Monday, February 6, 1865. He himself desired a unitary Government, and thought that a "Legislative Union" for Canada was preferable. But it was vehemently attacked by the French Canadians, and MacDonald admitted, in the speech referred to above: "It would not meet the assent of the people of lower Canada, because they felt that in their peculiar position, being in a minority, with a different language, nationality, and religion from the majority—in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of lower Canada—if I may use the expression—would not be received with favour by her people." The Canadian constitution has succeeded, not because the French minority merged its language, education, and cultures, but because these rights were safeguarded by the Federal Government established which the Act of 1867 established. It is true that no specific mention was made of these rights with the exception, of course, of section 93 of the Act, but it is no less true that the form of the Government, which was federal, and which conferred provincial autonomy upon Quebec, solved all the racial and religious quarrels of the country. It is so, because the French minority is in an overwhelming majority in Quebec, and through its supremacy in this province, has safeguarded her education, religion, language and economic position. It is therefore meaningless to assert, as many people are fond of asserting, that such rights have not been granted by the British Parliament to any community before. The position must be viewed from the point of view of the geographical distribution of the two races in Canada, and viewed from this point, we are perfectly justified in stating that the Act of 1867 did safeguard the French minority in all the rights which we are claiming by giving provincial autonomy to the province of Quebec and also incorporating section 93. Had the Muslims possessed the same overwhelming majority in any one province of British India, had they been 80 per cent. in the Punjab or Bengal, the analogy with Canada would have been appropriate, and our demands for safeguards would not have been insistent. But the position is completely altered by the fact that in Bengal where they are supposed to be in a majority of 3·9 per cent. they are in a minority for all practical purposes, as they are low in social, economic, and educational scale; and though their position in the Punjab is slightly better, no body can really say that a majority of 5 per cent. is an effective majority.

(3) I am, and have always been of the opinion that it is only by mutual trust and by exhibiting a spirit of compromise and give-and-take that

we can solve the communal problem in India. It must be confessed, however, that such a trust is lacking at the present time. The Muhammadan community has, with a few exceptions, co-operated with the Statutory Commission under the firm conviction that its case will be patiently heard. It does not desire any privilege: it asks for no concessions; it has always opposed monopolies, whether of caste or of creed, and it has resisted, and will continue to resist, any measure which is likely to establish an oligarchy in India. If we are now told that the problem of protection of our education, language, and political and economic rights is one with which Parliament cannot deal, that it is, to begin with impossible to protect the interests of minorities by a parliamentary statute, my community will be keenly and, let me add, justifiably disappointed. It feels that the constitution of country should pay regard not only to the various organs of the Government and their relation to one another, but also to the deeper and vital problem of the contentment of various classes and communities in India. The structure the new constitution may establish may be excellent, and it may contain the latest devices, and the quickest remedies for the Newtonian equipoise of the different authorities which it may constitute, but if it solves the communal problem by deliberately ignoring it, it will be like the deep sea fish, which, when brought to the surface, first swells, and then bursts. If the new constitution does not take into account the various communities who will be affected by it profoundly, and who are expected to work it, if it leaves out of account great and powerful interests, e.g., the commercial interest and the landed interest, it will be a complete failure. The problem of minorities cannot be solved simply by asking the latter to look to their fellow-beings for redress of their grievances. Most certainly we should, and it is our duty to do so, for we know we have to live in the same land with our fellow-citizens. We need this, it is true; but we need something more than this. We need guarantees for the future, guarantees which will be adequate and effective. It must be confessed, however, that there is no prospect of the solution of this problem, and the Nehru Report which was intended to pacify the discordant elements of the Indian population, has aggravated the evil. Instead of uniting India, it has divided her. The Muslims are practically unanimously opposed to it. They feel that the British Parliament should deal with a problem upon the successful solution of which depends the welfare of millions of people, and the smooth working of any machinery that may be devised by the Commission. The latter cannot say, "We are very sorry, but we know that this is not a matter with which we are concerned. We deal only with the *form* of the government. We are here only to provide a framework of the future Government of India. Beyond that, we shall do nothing." If such a policy is adopted and the minorities are presented with an Instrument in which there is no provision at all for their protection, then, I am convinced, there will be keen disappointment throughout India, and my community, which has co-operated whole-heartedly with the Commission, will be greatly disappointed. I feel that I must give expression to these views on behalf of those who, like myself, have fought for co-operation with the Commission. I do not want to be misunderstood. I do not desire, my community has never desired, anything which might be regarded

as an encroachment on the rights of other communities. I would very strongly oppose any claim put forward by any community, class or creed which is likely to produce this effect. These proposals are put forward in the hope that they are not inconsistent with, or inimical to, national progress. I am convinced that they are an indispensable preliminary to the *constitutional progress* of our motherland.

(4) It will be noticed that the clause quoted above merely maintains existing rights. It does not confer any new ones. There are, however, several communities in India who have no right in important spheres of national activity, such, for instance, as the depressed classes, and Muslims. Again, existing "rights" of depressed classes are so restricted that they cannot rely on this clause for the protection of their interests. The clause should, therefore, be amended, so that the legislative and other bodies may be prohibited from abridging or restricting not only the existing rights but also those rights which any race, community, or class enjoys under the new constitution.

(5) I have dealt with the methods that may be devised for enforcing our safeguards. In my scheme, the Governor will be the pivot round whom the machinery for enforcement of our safeguards will revolve. It is, however, necessary to point out that resort can be, and, I believe, will be, had to the ordinary courts for redressing our grievances, and enforcing the provisions for the protection of minorities. Let me summarise my conclusions:—

(*a*) The Governor will have the power to require any case to be brought before the Cabinet. It will be his duty to advise the Cabinet, but he will not ordinarily overrule its decisions.

(*b*) The Governor may require that an important matter should be submitted to him before final orders are passed by the Cabinet.

(*c*) In the administration, he should have the power to ensure that the orders of the executive are carried out. Of course, the Cabinet will ordinarily take the necessary measures for the purpose, but the Governor cannot be absolved of his responsibility in this respect.

(*d*) The Governor will have the right to call for the resignation of the ministry. Such a power is conferred on Dominion Governors, and is exercised at times. If he is unable to form a satisfactory Cabinet, he can dissolve the Council.

(*e*) The Governor will be specially charged with the duty of safeguarding Imperial and Central control. In all matters in which the question of Central or Imperial control is involved, or the rights of minorities and other special interests are affected, the Governor must have the power to suspend orders of the executive Government to prevent action being taken in contravention of the law, or to enable a reference to be made to the Government of India when the Central control is involved.

(*f*) For the protection of minorities, the Governor should, in the field of executive action, have the power to suspend executive action on the part of the Cabinet, and if they refuse to listen to his advice, he should have the power to call for the resignation of the Cabinet, the dissolution of the Council and, finally, the suspension of the constitution.

(*g*) As regards legislation, I have already pointed out that if a certain percentage of Muslim members of a body memorialise the Governor, it will be his duty to consider the memorial carefully, and to take such action as he may deem suitable.

These powers should be given to the Governor by a statute, and should be definite, clear and unambiguous.

(14) Muslims and the Nehru Report.

I will deal very briefly with the Nehru Report, as an extended treatment is impossible in a report of this kind.

(1) The Nehru Report has built up an imposing edifice on an insecure foundation. It tried to solve the communal problem by advocating adult suffrage. This is an ideal with which I and the Muslims of India are in complete agreement. The question, however, with which we are now concerned is: Should adult suffrage be introduced at the present time? I am emphatically of the opinion that at the present time it is impracticable. The electorate is not yet ready for it. It needs training, it lacks education, it is deficient in organisation, and it is still enveloped in the Cimmerian bog of superstition. The franchise should be widened. The recommendations of our Committee on this subject are sound and practicable.

(2) If it is conceded that—and I do not know any person who has had sufficient experience of Indian conditions, who will not concede this point—adult suffrage is impossible under the existing circumstances, then the edifice so laboriously built up by the fond authors of the report topples down, and the communal problem, whose solution was attempted by this device, is intensified.

(3) The Nehru Report not only reduces the proportion of Muslims in seven out of nine Legislatures, it also deprives them of rights which they now enjoy by law. For instance, it deprives them of separate electorate in local bodies, which they now enjoy by the U. P. Acts of 1916 and 1922.

(4) It substitutes joint electorate, with a fixed reservation of seats, for ten years, after which the reserved seats also will disappear. The effects of this will be disastrous in the extreme. Muslims, after ten years, will be wiped off every Legislature and other self-governing bodies in India, and will form a sub-caste, or a sub-division of the depressed classes. The naïvety of the framers of the Nehru Report will be clear from this proposal. Needless to state, the Muslim community has unanimously rejected the Report.

(5) Muslims are not guaranteed any share in the administration of their country; while their language, education, culture, and religious rights have been contemptuously brushed aside.

(6) Muslims, it is true, will manage to exist politically for ten years. Other communities and classes will not, however, be so fortunate. The Europeans, Anglo-Indians, Christians, and the depressed classes will be totally unrepresented in the Indian Legislatures. As adult suffrage cannot be introduced, the depressed classes will continue to occupy the unenviable, social, and economic and political position which they now occupy. The economic and other interests of Europeans, and the special privileges which the landlords now enjoy, are treated as scraps of paper.

(7) In the centre, there will be a narrow oligarchy of urban *intelligentsia*. The Central Government will be effectively bureaucratised. As Muslims have not been given separate representation in the Central Legislature, even for ten years, and as, in a system of joint electorate, no European, Christian or a member of the depressed classes will have the slightest chance of election to the Central Legislature, we shall witness the phenomenon of a small, narrow, and intellectual oligarchy, expert in manipulating elections, dominating the Indian States as well as the provinces of British India. As the scheme sketched in the chapter dealing with the Indian States makes it perfectly clear, the new Dominion Government will rule with a rod of iron both Indian India and British India. Clause 13A of the Report supplies the coping-stone to the edifice, and makes the new Dominion Government a sort of Leviathan. The treatment of the military, financial and naval problems is beautifully vague. It is clear, however, that the new Dominion Government will lean for support for a long time on British officers, and British bayonets. Will the latter consent to this? This, of course, is for them to decide. I doubt very much whether the new Dominion Government can be maintained without British Army.

There is not a single representative Muslim in India at the present time who approves of the Nehru Report.

(15) Services.

I have dealt with the position of Muslims in the services in a separate chapter, to which your attention is drawn. Here I deal with the problem of the reorganization of Indian services, consequent on the introduction of provincial autonomy in these provinces.

The position which has resulted from the decisions taken on the Report of the Lee Commission may be summarized as follows. Of the All-India Services (excluding the Indian Medical Service) the only ones that remain for the future on an all-India basis, and continue to be

recruited and controlled by the Secretary of State in Council, are those which deal wholly or mainly with the reserved field of administration. The remainder of the all-India Services are being converted into new Provincial Services of a standard higher than the old Provincial Services, inasmuch as they were made responsible for the work which was previously done, not by a Provincial Service, but by an all-India Service. The Secretary of State is also parting with his control over the majority in the Central Services, Class I, which he had previously in varying degrees exercised. The Secretary of State in Council thus retains control over—

(*a*) the All-India Services in the reserved field and the Indian Medical Service;

(*b*) the Central Services, and certain portions of others.

The Government of India should, in my opinion, receive full powers of control over the Central Services, while the Provincial Governments should have full powers of control over, not only the old Provincial Services, but the new Provincial Services which should be organised up to take the place of all-India Services in the transferred field. It must be borne in mind that the delegation of power by the Secretary of State to the Central and Provincial Government was made subject to certain general conditions designed to safeguard the rights of existing members of the Services, to ensure impartiality in making first appointments by utilizing the services of the Public Service Commission or of permanent Boards of Selection when appointment is made otherwise than by competitive examination, and finally to secure the observance of a proper procedure and rights of appeal in disciplinary cases. Subject to these general conditions, the organisation of the Services, the numbers, pay and conditions of service generally and the method of making first appointments as well as the ordinary administrative control should be, as they, as a matter of fact, are entirely in the discretion of the Governments concerned. Where, on the other hand, the Secretary of State in Council has retained his control, he exercises it strictly, and himself prescribes the strength of the Service, including both the number and character of the posts to be filled, the methods of their recruitment, the conditions of service, their allowances and pensions. While the ordinary administrative control of the members of these Services rests naturally with the particular Governments under which they are working, the Secretary of State in Council is the final authority in matters of discipline and in all representations that the members of the Services may make in regard to their conditions or the equity of their treatment.

On the transferred side, Ministers were expected to organise their own Services.

I am of the opinion that the percentage fixed by the Lee Commission with regard to the Indian Civil Service and the Imperial Police Service should be reduced to 25, and it should be steadily reduced until it is 10 per cent. in 25 years. With regard to the Europeans in these Services I am prepared to support all the safeguards embodied in the Government of India Act for their protection. I, therefore, think that the provisions of

B(1), 67A, and 72D, and 96B(2) concerning the Civil Service of the Crown in India should be retained. I am also prepared to retain Devolution Rules (10) and Appeal Rules (17), for the purpose of safeguarding the European members of the Imperial Services. I have no objection to the retention of Civil Services (Governor's Provinces), Classification Rules, the Fundamental Rules, the Premature Retirement Rules, the Superior Civil Services (Revision of Pay, Passage and Pension) Rules, and the Civil Services (Governor's Provinces) Delegation Rules. I do so, because I feel that India will still require a certain percentage of Europeans in the I. C. S, and the Police Services If we want the help of Europeans we ought to be prepared to guarantee them security of tenure and equitable treatment. It is for this reason that I advocate the retention of the sections of the Act, and the rules framed under these sections.

I may say very briefly that I am not in favour of limiting, restricting, abridging, or withdrawing any of the rights or privileges which the European members of the Imperial Services enjoy by law.

I think it is necessary for the peaceful and prosperous development of my country that a European servant should have no apprehension regarding his prospects. Nor should an Indian Legislature do anything, directly or indirectly, which is likely to keep members of this class in a state either of suspicious aloofness, or of aroused hostility. It is the experience of a number of influential and representative persons that European officials inspire confidence, in all cases in which there is a clash of communal and class interests. I believe that this is only a temporary phase, and I look forward to the day when every Service in India will be manned exclusively by children of the motherland. At the present time, it is not practical politics to dispense with the services of persons who, whatever their shortcomings may be, have tried, and in many cases successfully tried, to adapt themselves to the changing conditions of India. Indeed, a perusal of the evidence given by Indian Ministers from different provinces of India before the Reform Enquiry Committee in 1924 will convince anyone that the European servant, who had hitherto been regarded, and, let me add, in some cases, justly regarded, as unsympathetic and reactionary, adapted himself to the changes produced by the Reforms Act with surprising success. It may be objected that it is impossible to keep servants who look to the Secretary of State for India for protection under the control of Ministers responsible to the Indian Legislatures. In reply, I need only refer to the experience of Indian Ministers recorded in the Reform Enquiry Committee Report. At that time, the atmosphere was quite different and Indian Ministers had just been installed in office. A certain amount of suspicion was inevitable between the new rulers and the old. Yet the administrative machinery worked smoothly and there was, as a general rule, no friction. If that was so in 1920, there is no reason why the European servant should become unsympathetic or hostile to the new constitution, now. The change of 1920 was sudden, unprecedented and almost unique. If the European exhibited his adaptability then, what ground is there for supposing that he will become hostile in 1930? I hold strongly that the relation of the Imperial

Services *vis-à-vis* the Secretary of State for India as defined by the existing law is not incompatible with the honest, impartial, and efficient discharge of the duties by the European Civil Servants who have to work under Indian Ministers in future. A certain number of Europeans may be appointed in other services also, such as the Irrigation Department, the Forest Department, and the Education Department. They will, of course, be experts, whose technical knowledge and experience may be needed for the building up of an important department of the Government. All other services should be provincialized. This does not mean that all the Imperial Services should be reduced to the level and status of the Provincial Civil Service. All that it implies is that the Provincial Government will then acquire control over the appointment, promotion, and dismissal of such servants. I am strongly of the opinion that the services under the Provincial Government should be organised into cadres, approximating to the cadres of existing services. There should be a Subordinate Service; a Provincial Service; and, lastly, a service corresponding to the present Imperial Services, which may be called the Superior Provincial Service. I feel very strongly that the Superior Provincial Service should be recruited mainly by competitive examinations. It should not be reserved, as suggested in certain quarters, for members promoted from the Provincial Service. The proportion of the members of the Superior Provincial Service appointed by examinations to the members who are promoted to this service from the Provincial Service should be 3 to 1.

I will now deal very briefly with a few other problems connected with the question of all-India Services.

(1) Are there any portions of the field of provincial administration in which Parliament would feel that it has a special responsibility? To this my reply is that the Parliament should confine itself to the protection of those members of the Imperial Service to whom the Secretary of State has promised protection.

(2) Again the interests of the general administration of the country require that in certain branches there should be a high and uniform standard which could not be insured if all the services were organised and recruited on a provincial basis. Examples may be cited of branches demanding technical and highly specialized skill, such as engineering, forests, etc. Services in these branches should be organised on an all-India basis and the Government of India should lay down a uniform standard for the admission of persons to these services.

(3) Again, if in any service the continuance of the British element is required, the Provincial Governments will be obliged, in some cases, to obtain that element only through the assurance given by the control of the Secretary of State.

(4) For special appointments, the Provincial Governments, or the Government of India as the case may be, will, if they obtain the services of a person on the advice of the Secretary of State for India, be bound by such conditions as the Secretary of State may impose.

(5) There is a great risk of the provinces becoming water-tight compartments, recruiting their own inhabitants on such terms as they can get The standards will be lowered; and the *esprit de corps* of services which exercises a healthy influence at the present will be seriously affected. For these reasons I am strongly of the opinion that recruitment of Indians to the majority of these posts should be on an all-India basis.

(6) Another factor which is of supreme importance, should also be taken into account in the consideration of this problem. Let me quote the following from the memorandum presented to the Indian Statutory Commission by the Government of India on *the subject of the Superior Services in India*: "One problem, which has come prominently to the fore in consequence of the extensive policy of Indianization, is that of minority communities. *Under a system of unrestricted competition, experience showed that the Hindu community would practically monopolize the superior services.* This was a position against which the minority communities, and in particular the Muhammadan community, protested vigorously, and the justice of that protest has been recognised by the Government of India. Consequently, as a general rule, provision has been made for withholding from competition approximately one-third of the vacancies, so that if the results of the competition necessitate such action, these places may be filled by nominating fully competent members of minority communities. *The system is at present working satisfactorily in the Indian Civil Service and the Indian Police Service, in that there is no lack of qualified candidates of minority communities for appointment by nomination.*" The statement by the Government of India on the representation of minorities in the services is most important. Their admission that the system of appointment of members of minority communities is working satisfactorily in the Indian Civil Service and the Indian Police Service has a most important bearing on the question of Provincialization and Indianization of Service.

(7) Again, the problem of the representation of minority communities in the services can no longer be shelved. Whatever scheme is framed for the reorganisation of these services, it must be distinctly and clearly laid down that the claims of the minority communities to an equitable share in the administration of their country should be satisfied. Otherwise there is a danger of a narrow oligarchy dominating the entire administration of this country.

I have dealt with the question in chapter IV of this Report where this problem is discussed in detail. I am convinced that unless this principle is consistently and logically applied, all our schemes for the re-arrangement of the constitution will be useless.

(8) I am strongly of the opinion that the services should be absolutely free from political influences. With a view to achieve this, it is necessary that a Provincial Public Services Commission should be established with adequate and substantial powers for the recruitment of candidates for all posts. The Commission should also possess disciplinary power, and should be allowed to consider representation from public servants, frame rules for

the conditions of employment in the service and adjudicate on all questions of dismissal, etc., of a public servant. Let me refer to Act no. V of 1902 passed by the Commonwealth of Australia which created a Public Services Commission for the Commonwealth. The following brief account of the powers conferred on the Public Services Commission in Australia may be summarized here. In this Act, the most elaborate provisions are laid down to secure that the control shall not be political, and shall be in the hands of a Commissioner who cannot be removed except on an address from both Houses of Parliament. The service is classified into four grades, administrative, professional, clerical and general, and the principle of promotion by merit and seniority, but not by seniority alone, except in case of equal merit, is followed. The power is given to take in outsiders if there is no other equally capable candidate in the service, but the danger of political jobs is controlled by the requirement in the case of all promotions or new appointments of a recommendation from the Minister in charge of the department in question, a recommendation by the Commissioners and a decision of the Governor in Council. If the decision be to reject the candidate proposed by the Commissioner, the only alternative is to reject him and ask for another, and the cause of this action must be laid before Parliament. The servant, if accused of important offences, must be tried by a Board of Enquiry. I am of the opinion that the powers of the Commission should be as follows:—It should be the chief authority for determining methods of recruitment; it should decide the preliminary qualifications of candidates and determine the syllabus of the examinations. It should also hear disciplinary appeals, representations about particular grievances or claims for compensation by officers, and general questions connected with conditions of service, such as, pay, allowances, and pensions. Provision may also be made for linking up the activities of the Central Commission with the Provincial Public Services Commissions. The Provincial Public Services Commission should also recruit candidates for important offices maintained by local bodies such as, Secretary to the Local Board, Public Health Officer, Engineer and other officers who are now appointed by local bodies. The Provincial Public Services Commission will organise a cadre for each of these services, frame rules for their appointment and promotion, and hold competitive examinations, or such other tests as they may deem necessary, for their admission to the services of municipal and district boards, and other self-governing bodies. I am strongly of the opinion that appointments to the Commission should be made by the Central Government. By this means a certain amount of uniformity will be achieved, and a high standard maintained. It is important to note that all new constitutional arrangements, regarding services in each province, should be accompanied by perfectly specific statutory provision requiring the establishment of satisfactory machinery to secure for the provincial services in recruitment of dismissal and promotion, and other matters the same kind of provision that is now afforded to the members of the all-India services and the Central services by the Public Services Commission, and by the Government of India Act of 1919. I attach very great importance to this provision, as I believe that until and unless the conditions of service are

satisfactory and the tenure of our public servants are secure, the right type of men will not enter these services, and the interests of the province will be seriously affected.

(9) Another important point to be noticed in this connexion is that the ratio of Muslims should be fixed in every grade of service, and the Public Services Commission will be required to see that this ratio is maintained in each grade. This they may do by various methods. I may suggest that all candidates, whether Muslim or Hindu, should be appointed on the result of a competitive examination, or in the case of special appointments, they should be selected if they satisfy such tests and conditions as may be imposed by the Commission. Muslims should be selected from the Muslim candidates and Hindus from the Hindu candidates. This system has been in operation in the United Provinces in the recruitment of candidates for the United Provinces Provincial Executive Service for the last eight years, and has worked most satisfactorily. It has just been extended to the examination held for the Excise Inspectors. The Chief Secretary to the United Provinces Government admitted, at a meeting of the Joint Free Conference at Lucknow, in December, 1928, that the candidates selected on the result of a competitive examination, in which posts were reserved for Muslim and non-Muslim candidates, were efficient. The ratio of Muslims has been fixed at 33 per cent. of all candidates. Both these examinations are competitive, but Muslims are chosen from among Muslim candidates, and Hindus from among Hindus in accordance with the ratio fixed for each community. I strongly support this system, and recommend that the Public Services Commission should be charged with the duty of maintaining this ratio in all services.

(16) Financial administration of the local Government.

I do not wish to deal minutely with the financial condition of this province, as the data at our disposal are insufficient. I think it necessary, however, to draw your attention to one or two salient features of the finances of this province, in order to bring out the need for the changes which I suggest. The annual accounts of the United Provinces have showed a succession of deficits since the introduction of the Reforms up to the end of 1925-26 amounting in all to over Rs. 3 crores, which were met partly from the opening balance of Rs. 80 lakhs at the beginning of 1921-22, and partly by the appropriation of a considerable portion set apart for development purposes. Except for an increase of irrigation rates and court-fees, there has been very little additional taxation. It may be noted that the United Provinces Government had to be warned by the Government of India that no loans would be sanctioned, whether they were to be raised in the open market or obtained from the Central Government, if the proceeds were likely to be applied to the practice of financing of revenue deficit.

The general financial position of the province was a source of considerable anxiety until the year 1925-26 when, owing mainly to the remission of Rs. 56 lakhs by the Central Government, financial stability was

expected to be restored. The actuals of the year, however, showed a deficit of Rs. 31 lakhs, and with the gradual reduction and final cessation of its contribution, the position has improved very considerably, and the revised estimates for 1927-28 show a surplus of Rs. ·152 lakhs. The following remarks of the Finance Member of the province in his Budget speech in 1927 summarise the present financial position of the province :—

> "How much yet remains to be done I recognise as clearly and as readily as anyone. But there is reason to hope that in the matter of finance, we are at length turning the corner. The remission of our contribution for which the budget of the Central Government provides will add materially to our resources. Further, our revenues will, before long, steadily increase . . . Our revenues, however they may expand, will never be in excess of our needs. But in the coming years they will, I believe, be more adequate to our requirements than they have been in the period that has elapsed since the Reforms."

Since then the province has received the benefit of the final remission of the last instalment of the provincial contributions. The above account will show at a glance the difficulties with which these provinces have been faced. The question now arises whether the inequalities arising from the present distribution of resources between the Central and the Provincial Governments can be mitigated, if not entirely removed. I offer the following suggestions on this point.

(1) The Central Government should make grants from Central revenues for expenditure on a few important provincial subjects. Grants-in-aid from federal revenues to the provinces have been given in Canada for the purpose of constructing and improving highways and of developing agricultural and technical education; and in Australia, for the provision of hospital treatment, and for persons suffering from venereal diseases, etc. The Central Government might, for instance, allot grants-in-aid to the provinces for a series of years for compulsory primary education, public health, and construction of roads. These grants should be subject to the vote of the Central Legislature. It is clear, however, that some sort of control, which is consistent with provincial autonomy, will have to be exercised by the Central Government.

(2) I approve of the suggestion made in paragraph 530 of the Taxation Enquiry Committee's Report. The Committee state that the income-tax might continue to be levied by the Government of India, but a definite share of the yield might be allocated to various provinces on principles to be determined. It may be worth while to provide for a flat rate on the total assessable personal income, as this would be simple and more convenient. This was suggested by the Government of India in their letter to all the Provincial Governments on the Taxation Enquiry Committee's Report.

(3) Another proposal of the Taxation Enquiry Committee is that a small portion of the receipts of the super-tax on companies or corporation property tax should be allocated to provinces. The most serious difficulties

that stand in the way of such an arrangement would be removed if a reasonable agreement could be secured among the provinces as to the principles of apportionment.

(4) Again, there might be a surcharge or *centimes additionelles* confined to the income-tax. These are levied on the Central income-tax in France, Belgium, Italy and various other European States for local purposes. The principal objection to such surcharges is that they might encroach seriously on the sphere of Central revenue. This objection would be removed if the surcharges were limited to a definite percentage of rates prescribed by the Government of India. A tax on tobacco might well be raised by the Central Government and the amount distributed between the Central Government and the Local Government.

(5) Certain fundamental principles regarding the powers of taxation of provinces must, however, be very constantly kept in view, if we are to avoid financial mal-administration :

(i) No province should be in a position to tax for its own purposes anyone outside the province.

(ii) There should be as little opportunity as possible for interference by one authority in the legitimate field of the other. As far as possible, the system should not involve the levy or collection on the authority of one Government of what another Government spends.

(iii) Exercise of the powers of taxation should not result in variations in the economic condition under which industry and commerce are carried on as between different provinces.

(iv) The Central Government should be in a position to fulfil their international obligations under commercial treaties with foreign countries.

(v) The Central Government should be in a position effectively to prevent encroachments on its fiscal sphere and to safeguard the administration of Central provinces.

(vi) When there is a conflict between the fiscal interests of a province and those of the country as a whole, the latter should prevail.

(6) *Provincial Borrowing.*—Before the Reforms, local authorities, such as Port Trusts, and the larger municipalities were allowed to borrow, subject to certain restrictions, small amounts in the open market, on local security. This right was never accorded to the provinces, partly because the revenues of India were legally one and indivisible, and were liable for all debts incurred for the purposes of the Government of India, and partly because the Provincial Governments possessed no separate resources on the security of which they could borrow. This privileged position gave the Government of India an effective means of ensuring provincial solvency and the right of detailed interference for this purpose.

Even as regards what was known as the Provincial Loan Accounts, the control was very detailed. The procedure observed was briefly as

follows. Every year the provinces submitted an estimate of their requirements for the following year in respect of loans to cultivators and to municipal and other authorities. The Government of India provided the net amount after making such reductions as were necessary on account of their borrowing programme for the year.

I need not detail the changes introduced since the Reforms, as they are too well known to need recapitulation here. The existing restrictions on the borrowing power of the Local Government are embodied in the Local Government (Borrowing) Rules which are based on section 30(I-*a*) of the Government of India Act of 1919. The loans are raised on behalf of, and in the name, of the Secretary of State in Council, and on the security of the revenues allocated to the province. My definite proposals on the question of borrowing are that all restrictions now imposed on the borrowing powers of Provincial Governments are in many cases unnecessary and inexpedient, and I recommend that they should be radically modified in order that every province may be able to borrow in the open market. This need not affect the Provincial Loans Fund, which was introduced in 1925, with the object of regulating the terms and conditions, the rate of interest, and the period of amortisation of all advances made by the Central Government to the Provincial Governments. It is worked on the principle that if a Provincial Government makes suitable arrangements for the payment of interest and amortisation, money will be made available from it to the full extent of the provinces' requirements, and the Government of India would normally refrain from scrutinising the purposes for which loans are required by the province. The Fund, it need hardly be added, does not affect the rights of the provinces to borrow in the open market subject to the conditions laid down in the Local Government (Borrowing) Rules. I recommend, therefore, that the Local Government Borrowing Rules be amended, and provinces should be allowed to borrow in the open market, subject to such co-ordination of the borrowing activities of the various Provincial Governments as may be necessary in the interest of the provinces themselves and of India as a whole. I admit that it is undesirable for the Government of India and the Provincial Government to compete against one another in the open market as regards their loan operations, and for this purpose, a certain amount of co-operation is necessary on the question of borrowing by the Central Government and the Provincial Governments. The necessity for co-ordination in financial matters arises from the fact that monetary operations are concentrated in two or three large industrial and commercial centres such as Calcutta and Bombay. Many advanced countries of the world, particularly those constituted on a federal basis, reveal a distinct tendency towards a co-ordination in the financial activities of their constituent States.

(7) *Separation of Audit from Accounts.*—I support the separation of Audit from Accounts. I think the experiment has, on the whole, proved a success, and the new system should be extended.

(8) I am strongly opposed to the imposition of any tax on agricultural incomes as I think that such a tax would affect the landlords of these provinces very seriously. The zemindars have passed

through a very trying period since the Reforms. There has been a failure in a succession of crops, and they have not been able to realise their normal rent for a number of years. The Oudh Rent Act and the Agra Tenancy Act have deprived them of a large amount of their power, and seriously affected their financial position. Such a proposal will impoverish the zemindars, retard the development of agriculture, and nullify all the effects of the Royal Commission on Agriculture.

(9) I am strongly of the opinion that the Meston Settlement should be scrapped. I recognise the right of the Central Government to demand extraordinary contributions from Provincial Governments in times of war. But contributions should not be a normal feature of any system of financial administration. They will be quite exceptional and may be confined to periods of abnormal difficulty, such as famine, flood, or war.

(10) The Central Government should formulate clear and definite proposals which would work automatically in the case of a demand by it for a contribution from various provinces. There should be no suspicion of favouritism by the Central Government of one province at the expense of others.

(11) At present no Provincial Government has power to levy any tax directly assessed on income or profits, and in actual fact, with the possible exception of *thathameda* in Burma, which is a survival of an ancient regime, no provincial taxes are now assessed directly on profits or income, though the land revenue system in some provinces aims at an assessment based more or less on net assets or profits. The question of control, therefore, in the case of provincial taxes of this nature, has not so far had to be actively considered by the Government of India. On the other hand, when constitutional changes are under discussion, it may be argued that there would be considerable justification for retaxing the present absolute restrictions on the levy of such taxes. There are, on the other hand, a large number of local taxes which are profits on income, and under the law as it has stood since the Reforms, the Government of India are powerless to interfere with the imposition of such taxes. Instances of these local taxes are :—

(1) The Chowkidari tax in Bengal and Bihar and Orissa.

(2) The taxes on circumstances and property in Bengal, Bihar and Orissa, Assam, the United Provinces and the Central Provinces.

(3) The cess on mines in Bengal and Bihar and Orissa, which is assessed on the net profits of mines, tramways, forests, etc.

(4) The tax on professions (levied in many provinces) which is assessed on income.

(5) The surcharge of the Central income-tax, which may be levied with the approval of the Government of India under the Madras District Municipalities Act. The Government of India, however, have not sanctioned the levy in any case.

The unrestricted levy of these taxes by local bodies is open to the objection that it is an encroachment on the fiscal sphere of the Central

Government, one of whose principal sources of revenue is the income-tax, and might in extreme cases lead to multiple taxation. On the other hand, the constitutions of most countries definitely provide for the levy of such taxes by local authorities. In fact, the Central Government in many countries has encouraged this form of taxation for local purposes. For instance :—

(1) In France when the fiscal system was reformed between the years 1917—1920, and four older taxes were replaced by a State income-tax, local authorities were empowered to levy *centimes additionelles* on this tax.

(2) In Germany when Dr. Von Miquel introduced his fiscal reforms in 1893 with the assistance of prominent German economists, he stated that one of the three principles underlying these reforms was that expenditure on objects of national importance, such as public safety, public health, primary education, and poor relief, should be defrayed by means of local additions to the State income-tax.

(3) In Italy a *surtax* not exceeding 20 per cent. of the general income-tax is permitted for local purposes.

(4) Even in England a local income-tax as a subsidiary source of local revenue has been strongly advocated by several authorities, and it was seriously considered by the Board of Inland Revenue in 1910.

In India the necessity for providing additional resources for local purposes has been universally recognised, for land, which is the most important source of local revenue in other countries, is almost exclusively taxed by the Provincial Governments, local rural authorities alone being allowed to levy a small cess on the Provincial tax.

The resources of local bodies in these provinces are, however, so small, and the duties imposed upon them by law involve such a large expenditure of money, that the power enjoyed by them to levy taxes of this kind cannot be taken away without a serious loss. I am, therefore, opposed to the taking away of the power of local bodies in this matter.

(12) I may make another suggestion here for the consideration of the Commission. I have stated above that the resources of our local bodies are small, and almost inelastic. They are, however, charged with the performance of numerous duties which are a very serious drain on their limited income. Take, for instance, the problem of compulsory primary education. In Madras, it was estimated on the lowest basis that universal primary education would cost five crores of rupees additional annually, plus a large initial expenditure on schools. Another estimate put it at ten crores a year. The additional cost of universal primary education in these provinces is not likely to be less, and the annual revenue of these provinces is barely 12½ crores. From these figures, it will be clear that it will be quite impossible for the local bodies to carry out such schemes without substantial help. In this connexion a suggestion was made by Mr. Gokhale in a resolution which he moved on March 13, 1912, in the Imperial Legislative Council which is well worth consideration. He

said: "The total consideration from land is distributed in an altogether different manner here and in England and France. In England the bulk contribution that comes from land goes to local bodies, the Central Government receiving only a very small amount as land-tax. In France more than half the contribution from land goes to local bodies. For the year which I have taken into consideration, for every hundred *centimes* levied by the State from land, there were 130 *centimes* levied by the Communes and Departments together. In this country, however, the division is in the proportion of 16 to 1, the sixteen-seventeenths goes to the State, and only one-seventeenth to local bodies. Now there we have really a serious grievance. I know that it will be said that in this country the land belongs to the State; but after all it is only a theory, and a mere theory cannot change the character of a fact. And that fact is, that the total contribution from land is distributed in India in a proportion which is most unfair to local bodies. If we could get for our local bodies a much larger share of contribution from land, even if the proportion was not as high as in the West, most of the financial troubles of these bodies will disappear." Professor Bastable in his work on *Public Finance* points out that land is pre-eminently a source from which local taxation must necessarily be largely drawn; he adds that in the rural areas there is hardly anything else from which revenue can be derived by local bodies. It is well known that cesses are levied in these provinces by the Government for local bodies. Anyone who has studied the finances of these bodies will agree that this amount is totally insufficient. I suggest that, in addition to the cess which the local bodies now enjoy, a certain proportion of the land revenue raised by the Local Government from each district should be handed over to the District Board for education, rural sanitation, and medical relief. The proportion may be fixed at, say, 10 per cent. An advantage of this scheme would be that the districts which pay a larger amount of land revenue than others will keep part of it for the development of their education and sanitation.

(13) I regard the separation of Central from Provincial balances as an indispensable preliminary to provincial autonomy. The Reforms Enquiry Committee, which examined the working of the Constitution in 1924, recommended this. The Government of India accepted this recommendation, but were of opinion that the change could not be introduced at a moment's notice, and that the new system must be slowly evolved with all possible "caution". I am of the opinion that in the United Provinces the separation of Accounts from Audit which has been urged as a necessary step in the separation of provincial balance, has been successfully worked. We are, therefore, justified in recommending the separation of Central from Provincial balances.

(14) I have already dealt with the question of grants-in-aid by the Central Government to Local Governments in certain matters, e.g., education, scientific research, roads, etc. In my opinion, the time has come when the Central Government should no longer leave the provinces severely alone as it has done since the Reforms, but should assume duties which no Provincial Government, if left to itself, can perform adequately and

satisfactorily. A certain amount of co-ordination seems to me absolutely necessary, otherwise we are likely to dissipate a good deal of our energy and waste a large amount of our revenue. I do not wish to be misunderstood. I do not desire constant interference by the Central Government in provincial affairs, nor do I view with equanimity the prospect of a mature, well-considered, and useful scheme framed by a Provincial Government with the consent of the Provincial Legislature being changed out of recognition by persons who are completely ignorant of provincial needs, provincial feelings, and provincial resources. I do, however, think that matters cannot be allowed to drift in the way they have done in the past, and the Government of India should come forward with a promise of help. The only help that is alluring enough and satisfying enough is financial help. Co-ordination in certain spheres, which are necessary to the building up of a healthy and intelligent electorate, such as primary education, medical and scientific research, construction of roads, etc., is possible through the system of grant-in-aid. The amount of supervision which the Central Government should be allowed to exercise over provincial affairs will depend upon the needs of each province. If a province is very keen on the development of compulsory primary education, and desires help from the Central Government for this purpose, the latter would be perfectly justified in laying down conditions on which such grants-in-aid can be given. It will rightly insist on a certain amount of supervision with a view to finding out whether the amount granted is properly spent or not. The Provincial Government will have no reason to complain, for it will know beforehand the price of the help which it requires from the Central Government. If it thinks that provincial autonomy is likely to be infringed, it will refuse such a grant. The Central Government cannot thrust a grant-in-aid on a province which, for various reasons, does not desire it. But if a province does accept a grant it will do so with its eyes open; and will, then, have to abide by such conditions as may be imposed by the Central Government. The history of the administration of many of the more advanced countries of the world, particularly those constituted on a federal basis, reveals a distinct tendency towards a co-ordination of the activities of the constituent provinces or States, especially in matters which are of more than provincial importance. I do not disguise the difficulties that are inherent in the extension of the system of grants-in-aid. It is liable to abuse, and will really be like a mixed salad of very curious herbs. But nobody will be obliged to eat it, if he does not like it. Let me quote here a few examples of the manner in which grants are given in countries which enjoy a genuine Federal Constitution, and where provincial or State patriotism is keener than in India:—

Canada.—(*a*) Although roads are essentially a State matter under the Canadian Constitution, the Dominion Parliament, in the interest of the country as a whole, found it necessary to pass the Canadian Highways Act in 1919, which authorised the expenditure of 20 millions during the following five years for the purpose of constructing and improving the highways of Canada. A grant of Rs. 80,000 was made to every province

during each of the five years, the remainder being allotted in proportion to their respective populations. The co-operation and encouragement of the Dominion Government have done much to raise the standard of road maintenance through the country.

(*b*) The administration of education is entirely a provincial matter under the Constitution, but the Dominion Government, realising the importance of vocational education, has found it necessary to supplement the provincial founds available for these purposes. In 1913 the Agricultural Instruction Act was passed, distributing 10 millions in ten years among the provinces for the advancement of agricultural education. In 1919 a similar sum was voted for technical education, which is distributed among the provinces approximately on a population basis, subject to the condition that the provinces spent at least as much on technical education out of their own revenues. This has given a great impetus to the development of vocational education, particularly in the eastern manufacturing provinces.

(*c*) Public Health Administration is also in the hands of Provincial Governments in Canada, but the Dominion Parliament has, by an Act passed in 1919, created a Dominion Council of Health which co-ordinates the activities of provincial administrations. It meets twice a year to discuss health problems which are of interest to all the provinces and as a result of its efforts, there is now greater uniformity in the standards of public health administration.

Even in Australia, where the States have always been jealous of any interference in administrative matters by the Commonwealth Government, there is a distinct tendency towards centralisation and co-ordination of State activities:—

(1) Inter-States Conferences in matters of education are held frequently.

(2) The Commonwealth Government has undertaken the supervision of the treatment for venereal diseases and grants a subsidy of £ 15,000 per annum to the various States for the provision of hospital treatment for persons suffering from these diseases.

(3) Under the Institute of Science and Industry Act of 1920, the Commonwealth Government is required to establish—

(*a*) a bureau of agriculture;

(*b*) a bureau of industries; and

(*c*) such other bureaux as the Governor-General may determine.

Power is also given for the establishment of a General Advisory Council and advisory boards in each State, to advise the director in regard to the general business of the institute, and any particular matter of investigation or research. Under the Act, the Director is required to co-operate, so far as is possible, with existing State organisation in the co-ordination of scientific investigation.

These examples will show conclusively that even in Federal Governments wherein the sphere of activity of the Central Government is greatly restricted, need has been felt for the co-ordination of the activities of the Provincial Governments. I am of the opinion that the Central Government should be asked to help in the development of primary education, sanitation, scientific research, roads, and industries. This control will be exercised only in those provinces which apply for grants-in-aid to the Central Government, and will be limited only to that department of the Provincial Government which spends the grant-in-aid. Again, the Central Government allot to the provinces a certain amount from the centrally collected revenues on the basis of their tax-yielding capacity. If a tax on tobacco, for instance, yields a substantial amount in Madras, a part of it should certainly be allotted to that province by the Central Government. This is fair and equitable, and it will act as an incentive to all Provincial Governments. I am strongly opposed to the suggestion, which has been put forward in certain quarters, that a province is entitled to keep every penny of the tax levied on an article, which is manufactured in that province. If this principle is applied, it will create a great deal of heart-burning and jealousy among the different provinces. I have no objection to the establishment of a National Fund fed from Central Revenues, which would be allocated to nation building services on a test that is definite, unambiguous, and automatic.

I recommend that the financial administration as at present constituted with particular reference to the distribution of resources between the Central Government and the Local Government should be maintained, subject to the modifications suggested above.

(17) Suggestions for the reforms of local bodies.

(1) I am strongly of the opinion that the District Boards Act of 1922 should be overhauled. Though this subject had been under the Government's consideration since 1918, the District Boards Bill did not receive sufficient attention in the Council. It is, indeed, clear that the main principles were left unsettled, and the administrative policy was not adequately discussed. "No clear definition of local and provincial functions or of local and provincial finance was made. Not only was there far too little examination before the Bill was framed; but the Bill was rushed through the Council in such a way that only the communal and taxation clauses received adequate discussion. The boards were abruptly deprived of an exceptionally strong substitute for it. No guidance was given to the boards; they were—speaking broadly—left to shift for themselves." (*United Provinces Government's Report to the Indian Statutory Commission.*)

I recommend that the District Boards Act should be amended, and provision made for an efficient executive therein.

(2) I am of the opinion that the Local Government should exercise greater supervision through the system of grants-in-aid. In England grants are made out of sums voted by Parliament to local authorities for the purpose of meeting a portion of the expenditure on services

of national importance, like education, police, etc., and in connexion with these grants, a high degree of central control is imposed on these bodies. In the words of a well-known authority (Sidney Webb, on "Grants-in-Aid", page 6) on local self-government in England: "The National Government in the course of three-quarters of a century from 1832 onward, successively brought the rights of inspection, audit, supervision, initiative, criticism and control, in respect of one local service after another, by the grant of annual subventions from the national exchequer in aid of the local finances, and, therefore, in relief of the local rate-payer." Effective provision should be made for inspection, audit, supervision, initiative, criticism, and control of local bodies by the Government. It should appoint its own expert staff of inspectors, who should be charged with the duty of seeing that the grant is properly spent and the object of the Government is not frustrated by any device.

(3) My next suggestion is that all important appointments maintained by local bodies should be made by the Provincial Public Services Commission, who should lay down definite rules regarding their conditions of service, pay, allowances, etc. In the organisation of cadres of services maintained by these bodies, as well as in their gradation and the fixation of their pay and allowances, the Provincial Public Services Commission will consult representatives of local bodies. The sanction of the Commission must be obtained for their appointment, and dismissal from such posts. Again, it will be one of the main functions of the Commission to see that the Muslims are adequately represented in these services.

(4) Effective measures should be devised for removing the grievances of the Muslim community in the local bodies of these provinces. Communal wranglings and quarrels in the local bodies have assumed proportions which, unless quickly removed, will make their growth impossible in these provinces. Measures should be devised for the representation of Muslims adequately and effectively in the services maintained by Municipal and District Boards. The number of Muslim teachers should be fixed at 30 per cent.; a proper proportion of contracts should be given to Muslims in all local bodies; Muslim children should be taught in their own language, viz., Urdu; and an adequate share of grants-in-aid should be given to Muslim educational institutions. Nothing should be done by any board against the rights of the Muslim community.

Any measures that may be devised for this purpose should not be liable to modification or repeal by any local body.

(5) I recommend the establishment of a Local Self-Government Board which should advise the Minister on broad questions of policy. It should be a representative body, and three-fourths of the members thereof should be elected. It should consist of 15 members, of whom four should be elected by the Municipal Boards, four by the District Boards, three by the Legislative Council, and two by the Chambers of Commerce. The Minister and Secretary of Local Self-Government should be *ex officio* members. It should be a purely advisory body, and should have no power to interfere in the details of administration. It should have, however, greater powers

than the present Board of Local Self-Government. It will help the Public Services Commission in the organisation of all the services maintained by local bodies, investigate Local Self-Government problems in other provinces of India, and exchange notes and ideas with persons engaged in this work. It will investigate new lines of development, advise the Minister on any new scheme which he may elaborate, plan surveys, and, finally, keep him in touch with the views of these bodies.

(6) The system of aldermen which has been so successful in England should be introduced in the Municipal Boards of these provinces.

(7) The educational qualifications of candidates for Municipal Boards should be raised. By this means a better type of members for the local bodies will be available.

(8) The relation of the Minister for Education with the local bodies needs readjustment. I am in complete agreement with the recommendation of the Hartog Committee on Education on this point. The present position in this respect is most unsatisfactory. The function of an Education Minister does not consist in acting merely as a conduit pipe. He is not there simply to dole out bright guineas to impecunious boards. He is there to see that the tax-payers' money is properly spent. That he does not do this now, because he is not allowed to do it by existing practice, is well known to all who have had experience of the present system ; nor are the effects of this policy, or rather lack of policy, unknown. Means should be devised for the election of Muslims as chairmen of district boards.

(9) Nothing that I have written in this section should be regarded as implying any desire on my part to restrict, limit, abridge, or withdraw any of the privileges, rights, or prerogatives which are now enjoyed by the local bodies. I am, and have always been, of the opinion that unless these bodies enjoy autonomy, our entire scheme of Constitutional Government and our ideal of Dominion Status will never be realised. Local institutions train men not only to work *for* others, but also to work effectively *with* others. Indeed, it may be said without any exaggeration that the best school of democracy, and the best guarantee for its success is the practice of Local Self-Government. My suggestions for the reform of these bodies are based on the principle that the functions of administration should be completely separated from those of deliberation. The one is the work of the Executive, the other is the right of the members of all deliberative assemblies, whether a Legislature, or a local board. It is the harmonious combination of these two elements in the local bodies of England which has made Local Self-Government such a striking success there. As President Lowell remarks : " In order to produce really good results, and avoid the dangers of inefficiency on the one hand and of bureaucracy on the other, it is necessary to have in any administration a proper combination of experts and men of the world." While the local authorities should have autonomy, they should by no means be free to act as they like, and the Provincial Government should be alert both to *restrain* and to *stimulate*.

CHAPTER II.

COMMUNAL REPRESENTATION IN THE INDIAN LEGISLATURE.

(1) Significance of this system to the Muslim community.

The Muslim community has been given the right of electing its own members by a system of separate electorates. In this system the electors are in general constituencies divided into Muslims and non-Muslims, and the seats for the two are fixed. In the United Provinces Legislative Council they are entitled to elect their own members to the Legislature, and the electoral rolls are also separate. This system is called the system of separate electorates, or the system of communal representation. The Muslims regard it as a necessary safeguard for the protection of their interests. They feel that if it is abolished they will disappear from the public life of their country, as the majority community possesses an overwhelming majority in seven out of the nine provinces, and Muslims form only 14·28 per cent. of the population of the United Provinces, 6·70 of Madras, 4·05 of Central Provinces and Berar, 19·7 of Bombay, 18·85 of Bihar and Orissa, and 28·96 of Assam. Only in two provinces, viz., the Punjab, where they form 55·33 per cent., and Bengal, where their percentage is 3·99, do they possess a majority. Yet their majority in the two provinces is very small indeed when compared with the overwhelming majority of Hindus in the other seven provinces. The Muslims, therefore, fear that if separate electorate is abolished they will be simply swamped by Hindu voters, and few Muslims will have any chance of election. This fear has been realised in those places where the system of joint electorate obtains, and few Muslims have been elected from such constituencies.

(2) The history of communal representation in India. Muslim deputation to Lord Minto.

The first step in the direction of associating Indians with the business of legislation was taken with the passing of the Indian Councils Act, 1892. Even at that period the Government of India recognised the importance of the representation of various interests in the Legislature. It will not be an exaggeration to say that the principle of representation by interest was the foundation upon which the non-official elements in the Council rested. The Government of India defined for each province the classes which were of sufficient importance to require representation. Thus in the province of Bengal the classes to which the Government of India considered that representation should be secured, comprised communities (for instance Hindus, Muslims and Europeans), classes (for instance the urban, the rural, and professional classes), and interests (for instance, commercial interests). Briefly it may be said that in 1892 the Provincial Legislative Councils were constituted with a view to making them representative of the more important communities, classes and interests, but the regulations under section 1(4) of the Indian Councils Act of 1892 did not themselves

recognise communal divisions. The Act gave representation to provinces, and left communal and class representation to be secured by direct nomination.

Lord Minto assumed office as the Viceroy and Governor-General of India in November, 1905. In August, 1906, a committee of the Executive Council of the Governor-General was constituted to consider suggestions for reform. While the Committee was at work, a most representative deputation of the Muslims of India, headed by the leader of the Indian Muslims, His Highness the Aga Khan, waited upon His Excellency the Viceroy on October 1, 1906. The deputation represented all classes of the Muslim community, and voiced the feelings of Indian Muslims on constitutional reforms in India. In their address to the Viceroy the deputation drew his attention to the following important points:—

(1) That in the whole of India the Muslims number over 62 millions, or between one-fifth and one-fourth of the total population;

(2) that if Animists and depressed classes ordinarily classed as Hindus, but not properly Hindus, were deducted, the proportion of Muslims to Hindus would be larger than is commonly shown;

(3) that as their numbers exceed the entire population of any first class European Power, except Russia, Muslims might justly claim adequate recognition as an important factor in the State;

(4) that the position accorded to the Muslim community in any kind of representation, direct or indirect, and in all other ways affecting their status and influence, should be commensurate not merely with their numerical strength, but also with their political importance and the value of the contribution which they make to the defence of the Empire;

(5) that the representation hitherto accorded to them, almost entirely by nomination, had been inadequate to their requirements, and had not always carried with it the approval of those whom the nominees were selected to represent;

(6) that while Muslims are a distinct community with additional interests of their own, which are not shared by other communities, no Muslim would ever be returned by the existing electoral bodies, unless he worked in sympathy with the Hindu majority in all matters of importance.

The deputation made the following specific proposals on behalf of the Indian Muslims:—

(*a*) That in the case of Municipal and District Boards the number of Hindus and Muslims entitled to seats should be declared, such proportion being determined in accordance with the numerical strength, social status, local influence, and special requirements of either community, and that each community should be allowed to return its own representatives, as in the Aligarh Municipality, and in many towns in the Punjab;

(*b*) that in the case of senates and syndicates of Indian Universities there should, as far as possible, be an authoritative declaration

of the proportion in which the Muslims are entitled to be represented in either body;

(c) that in the case of the Provincial Legislative Councils the proportion of Muslim representatives should be determined and declared with due regard to the considerations noted above, and that the important Muslim landlords, lawyers, and merchants and representatives of other important interests, the Muslim members of the district boards and municipalities and the Muslim graduates of universities of a certain standing, say five years, should be formed into electoral colleges, and be authorised to return the number of members that may be declared to be eligible.

(d) For their representation in the Imperial Legislative Council they suggested—

(i) That the proportion of Muslims should not be determined on the basis of numerical strength, and that they should never be an ineffective minority;

(ii) that, as far as possible, appointment by election should be given preference over nominations;

(iii) hat for the purpose of choosing Muslim members Muslim landowners, lawyers, and merchants, and representatives of every important interest of a status to be subsequently determined by Government, Muslim members of Provincial Legislative Councils, and Muslim Fellows of Universities should be invested with electoral powers.

(3) Lord Minto's Reply.

The reply of His Excellency the Viceroy to this address is regarded, and let me add justly regarded, as the charter of Muslim liberties. On that occasion Lord Minto clearly and unequivocably formulated the policy of his Government in no uncertain terms. He said:—

> " The pith of your address, as I understand it, is a claim that under any system of representation, whether it affects a municipality or a district board or a legislative council, in which it is proposed to introduce or increase an electoral organisation, the Muslim community should be represented as a community. You point out that in many cases electoral bodies, as now constituted, cannot be expected to return a Muslim candidate, and that, if by chance they did so, it could only be at the sacrifice of such a candidate's views, to those of majority opposed to his community whom he would in no way represent, and you justly claim that your position should be estimated not only on your numerical strength, but in respect to the political importance of your community and the service it has rendered to the Empire. I am entirely in accord with you. Please do not misunderstand me. I make no attempt

to indicate by what means the representation of communities can be obtained, but I am as firmly convinced as I believe you to *be that any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the belief and traditions of the communities composing the population of this continent.*"

(4) Discussion on it in India.

The committee of the Executive Council of the Governor-General which had been appointed in August, 1906, carefully considered the problem of Muslim representation, and collected data on the representation of Muslims in the existing Legislatures. The committee found that Muslims had not been sufficiently represented in the councils; that " the few elected members had not been fully representative," and that nomination had failed to secure the appointment of Muslims of the class desired by the community. In order to remove these grievances they considered two measures necessary. In the first place, they suggested that, in addition to the small number of Muslims who might be able to secure election in the ordinary manner, a certain number of seats should be assigned to be filled exclusively by Muslims; and, secondly, for the purpose of filling those seats, or a proportion of them, a separate Muslim electorate should be formed. The committee made no specific proposals as to the number of seats to be assigned to the Muslims in Provincial Legislative Councils, but suggested an electorate comprising payers of land revenue and income-tax and registered graduates of the universities. As regards the Imperial Legislative Council they thought that a total strength of six or perhaps seven members in a council of 46 would not be an excessive proportion for a community of such importance.

Accordingly they proposed that four seats should be set apart for Muslims, two to be elected in rotation by Bengal, Eastern Bengal and Assam, United Provinces and the Punjab and Bombay; and two to be filled by nomination by the Viceroy. For the elected seats they suggested an electorate consisting of the Muslim non-official members of the Provincial Legislative Councils, the Muslim Fellows of the Universities and Muslims paying income-tax or land revenue above a certain figure.

(5) Lord Morley's Promise.

Meanwhile, discussions had been carried on by various parties in the country with regard to the method by which Muslim representation could be secured. A certain section had suggested mixed electoral colleges for the purpose, but the Muslims were practically unanimous against the suggestion, and the London branch of the All-India Muslim League, headed by the late Rt. Hon'ble Ameer Ali, placed the Muslim views before Lord Morley, the then Secretary of State for India. The Second Reading of the Bill was moved by the latter in the House of Lords on 23rd February, 1909. In the course of his speech Lord Morley said: " The Muslims demand three things. I had the pleasure of receiving a

deputation from them, and I know very well what is in their minds. They demand an election of their own representatives to these councils in all the stages just as in Cyprus, where I think the Muslims vote by themselves; they have nine votes and the non-Muslims have three, or the other way about; so in Bohemia, where the Germans vote alone, and have their own register; therefore we are not without a precedent and parallel for the idea of a separate register. Secondly, they want a number of seats in excess of their numerical strength. These two demands we are quite ready and intend to meet in full."

(6) Mr. Asquith's Promise.

It is pertinent to quote here the statement of policy made by the Liberal Prime Minister, Lord Oxford, on behalf of the British Government in the House of Commons, in 1909, in the debate on the Government of India Bill of 1909 on separate electorate. The Muslims of India attach very great importance to this statement:—

"*Undoubtedly there will be a separate register for Muslims. To us here at first sight it looks an objectionable thing, because it discriminates between people, and segregates them into classes on the basis of religious creeds. I do not think this is a very formidable objection The distinction between Muslim and Hindu is not merely religious, but it cuts deep down into the traditions of the historic past, and is also differentiated by the habits and social customs of the community.*"

The views of Mr. Gokhale on this subject also deserve mention. He was the leader of the Nationalist party, and his sound views on this problem went far towards reconciling the Muslims to constitutional reforms. Indeed, there is no evidence to show that Muslims as such were opposed to the Reforms. On the contrary, they made it clear then, as they have made it perfectly clear since, that they desire the constitutional advance of their motherland, provided their interests are properly safeguarded. A careful perusal of Mr. Gokhale's speech in the Imperial Legislative Council, on March 29, 1909, will show that his views on the subject were practically the same as those of the Government of India. He said: "I think the most reasonable plan is first to throw open a substantial minimum of seats to election on a territorial basis in which all qualified to vote should take part without distinction of race or creed, and then supplementary elections should be held for minorities which numerically or otherwise are important enough to need special representation, and those should be confined to members of minorities only."

(7) Effects of the System.

The result then of the Morley-Minto Reforms was that the constitution of the Provincial Legislative Councils was based upon a system of representation of classes and interests, consisting of basic constituencies representing landholders, groups of district boards, and groups of municipalities. There were no territorial constituencies properly so called, but the three presidency corporations returned special representatives, and except in their case, no

individual town or city had its own special member. To these basic classes were added representatives of universities, Chambers of Commerce, trades associations, and other like interests, the members returned being in the great majority of cases elected, but in some few instances nominated. On these constituencies there were super-imposed certain special Muslim electorates. Thus besides voting in their own special constituencies Muslims also voted in the general electorates, to counterpoise which these constituencies were themselves created. These special Muslim constituencies were on a territorial basis in the sense only that the province was divided territorially for the purpose of the election of Muslim representatives. Thus the Bombay Presidency was divided into four "areas" (they were not described as constituencies in the electoral rules), namely, the Southern, Northern and Central Divisions and the city of Bombay.

(8) Congress Muslim League Compact of 1916.

The next stage in the history of communal representation is the Congress-Muslim Compact of December, 1916 The scheme relating to the communal representation of Muslims was approved by the Indian National Congress and the All-India Muslim League in 1916. It is as follows:—

Adequate provision should be made for the representation of important minorities by election, and the Muslims should be represented through special electorates on the Provincial Legislative Councils in the following proportions:—

Punjab	...	... One-half of the elected Indian members.
United Provinces	...	... 30 per cent.
Bengal ...	...	... 40 per cent.
Bihar and Orissa	...	... 25 per cent.
Central Provinces	...	... 15 per cent.
Madras ...	...	... 15 per cent.
Bombay	...	... One-third.

With regard to the Central Legislature the scheme proposed—

(1) that its strength should be one hundred and fifty;

(2) that four-fifths of the members should be elected; and

(3) that the franchise should be widened, as far as possible, on the lines of the Muslim electorates, and the elected members of the Provincial Legislative Councils should form an electorate for the return of members to the Imperial Legislative Council.

The Montagu-Chelmsford Report discussed the question of separate electorate in paragraphs 227 to 230, and regarded it as "the most difficult problem which arises in connexion with elected assemblies." While they held that communal electorates "were opposed to the teachings of history, perpetuated class divisions, and stereotyped existing relations," they were obliged to say: "So far as the Muslims are concerned, the present system must be maintained until conditions alter, even at the

price of a slower progress towards the realization of common citizenship." They recommended, however, that communal representation should not be established in any province where they formed a majority of voters. As Muslims do not form the majority of voters in any province of India communal electorates were allowed to Muslims of all provinces of British India.

(9) The Report of the Southborough Committee of 1919.

The Southborough Committee recommended separate communal seats for Muslims, Sikhs, and European commerce in the Assembly, and for the Muslims and Sikhs in the Council of State.

The Joint Select Committee of the Houses of Parliament scrupulously avoided the arguments for and against communal electorates, and

(1) accepted the recommendations of the Southborough Committee regarding the representation of Muslims in the Legislatures;

(2) extended the principle by providing for separate representation of non-Brahmins in the Madras Presidency, and of Marathas in the Bombay Presidency, by reservation of seats.

In the House of Lords Lord Curzon congratulated the Joint Select Committee on "extending in some quarters communal representation."

It is important to note that the Act of 1919 *provided for separate electorate not only for Muslims but also for the Sikhs in the Punjab, Indian Christians in Madras, Anglo-Indians in Madras and Bengal, and Europeans in the three Presidencies, the United Provinces, and Bihar and Orissa. Moreover, it provided for separate etectorate by means of reservation of seats for non-Brahmans in Madras and Marathas in Bombay.*

Let me summarise the growth of this system :—

(1) Muslims have been definitely promised separate electorate for the last 23 years.

(2) This promise has been made not only by the Governor-General of India and the Secretary of State for India, but also by Lord Asquith, the Liberal Prime Minister, on behalf of the British Government.

(10) Why do Muslims demand Separate Electorate?

Reasons for Separate Electorate.

The reasons for separate electorate are—

(1) They preclude all possibility of communal bitterness. Before the Reforms there were sometimes free fights between Hindus and Muslims in the Punjab where mixed electorate prevailed. Mr. Chintamani admitted before the Reforms Enquiry Committee on August 18, 1924, that they had "eased the situation." Sir Tej Bahadur Sapru and practically all the Hindu leaders did not oppose separate electorate till the end of 1924. Opposition to it grew only after the Hindu Mahasabha had organized its propaganda among the Hindus of every province. The Hindu Swarajists, no less than the Hindu Liberals, *then* began to oppose it.

(2) The Muslims are educationally backward and their economic condition is unsatisfactory. The number of Muslims elected by joint electorate will be very small, and those who succeed in election will be completely under the influence of Hindu landlords and capitalists.

(3) There is unfortunately lack of confidence and trust among members of the two communities.

(4) The experience of joint electorate since the Reforms has convinced the Muslim community that it has no chance of election from general constituencies. I cannot deal with the subject exhaustively, as this problem has been discussed in the U. P. Muslims' Representation to the Statutory Commission.

(11) Are Separate Electorates Democratic?

There is, however, one point to which I would particularly like to draw your attention, and it is this. It is sometimes said that communal representation is undemocratic, as it is supposed to divide the two communities into water-tight compartments. Anyone who compares the system of separate electorate with the system of proportional representation will be forced to acknowledge that in principle there is little difference between the two. Let me make my position perfectly clear. I admit that the system of communal representation is a child of necessity. It is not an ideal system, and I look forward to the day when the need for it will not be felt by my community. It ought to be the aim of every Indian to work for this end. Muslims cannot, however, abandon it at the present time, as they are convinced that if it is abolished now, it will place them in a position from which they will never recover. This is due to our experience of the working of the system of general electorate in those constituencies in which such an electorate has been established. In almost every case the Hindus command much greater voting strength and Muslim candidates have little chance of election. The Muslims are firmly of the opinion that its abolition at the present juncture, or at any time, without their consent, will be disastrous to the peace and quiet of this country. They believe that it is the sheet anchor of their politics, and they are resolved upon maintaining it. I do not exaggerate when I say that if, at the present time, this vital safeguard is taken away, and Muslims are deprived of a right which has been promised to them by the British Government, India will be thrown into a vortex of communal strife, from which it will take her a long time to recover.

(12) Proportional Representation compared with Separate Electorate.

In nearly every modern European constitution provision is made for proportional representation. The object of this plan is precisely the same as that of separate electorates, though in appearance they look quite different systems altogether. It is deliberately planned with a view to affording protection to a minority, and is advocated solely on the ground that it

will enable a minority to return its representatives to the legislative, local, and other bodies.

Through it the minority organizes itself, and votes only for its own candidates. If the system is well devised there is every justification for believing that the percentage of members elected by a party will correspond exactly to the percentage of votes by that party at that election. That this contention is correct will be clear from the results of elections in Tasmania for 1909, 1912, 1913, and 1916.

Results of Tasmanian Elections.

Year of Election.	Party.	Votes.	Seats in proportion to Votes.	Seats actually obtained
1909 ..	Labour	19,067	11·69	12
1909 ..	Liberal	29,893	18·31	18
1912 ..	Labour	33,634	13·66	14
1912 ..	Liberal	40,252	16·39	16
1913 ..	Labour	31,633	13·79	14
1913 ..	Liberal	36,157	15·78	16
1913 ..	Independent	977	0·43	..
1916 ..	Labour	33,200	13·98	14
1916 ..	Liberal	35,398	15·27	15
1916 ..	Independent	1,817	0·80	1

These figures show conclusively how thoroughly and justly a well-devised scheme of proportional representation works.

The results of general election in the Irish Free State and in Scotland for the Glasgow education authorities show how equitable and fair is the representation of various parties under the system. I quote them from the publications of the Proportional Representation Society of England.

The figures for the Irish Free State (June, 1927) are—

Irish Free State Election, June, 1927.

(All seats contested.)

Party.	Votes.	Seats won.	Seats in proportion to Votes.
Government	314,684	46	42
Finana Fail	299,626	44	40
Labour	143,987	22	19
Independents	199,679	14	19
Farmers	109,114	11	14
National League	84,048	8	11
Sinn Fein and others	56,218	7	7

Glasgow Education Authority, March, 1928.

(All seats contested.)

Party.	Votes.	Seats won.	Seats in proportion to Votes.
Moderate	146,784	30	29·5
Catholic	52,551	11	10·5
Labour	23,151	4	4·8
Communist	1,187	..	0·2

In the Irish Free State each of the largest parties received slightly more than its strictly proportionate share. This is in accord with the experience in other elections held under the system of proportional representation in constituencies of small or moderate size. There has been no suppression of any considerable body of opinion; on the other hand, small groups have not been given an exaggerated importance.

The German system is very elaborate and complex, but the object is essentially the same. According to Mr. Brunet, one of the ablest commentators of the new German Constitution, in this system, the number of members, instead of being fixed according to the number of population, or of the electors, depends upon the number of those actually voting, in such a way that not until after the election can one count the number of members that will make up an assembly. There are no constituencies in the modern sense of the term. Voters must vote on a party ticket, which contains a list of candidates approved by the party. The electors make no change in the personnel, as the party ticket must be voted as a whole. The results of the election completely justified the hopes of its authors. In the election of June 6, 1920, the Social Democrats polled 21·6 per cent. of the votes, and secured 22·2 per cent. of the seats. The Independent Socialists with 18·3 of the votes secured 19·1 per cent. of the seats. A recent work on the new constitutions of Europe contains the following statement: "In one respect all of the new constitutions (of Europe) agree. They provide for the application of the principle of proportional representation." Before the War it was applied to the election of one or both Houses of the national Legislature of Denmark (partially), Belgium, Sweden, Bulgaria, Servia, and Portugal, and to the election of the Inner Chamber in the Grand Duchy of Finland. During the War it was extended to Denmark, and adopted in Germany, France, Italy, Czechoslovakia, Australia, Jugo-Slavia, Switzerland, Poland, Danzig, Esthonia, and Greece.

The facts cited above show conclusively that minorities are protected by this device provided they are organized in parties and have attained a certain educational level.

(13) Difference between Proportional Representation and Separate Electorate.

Now the difference between separate electorate and proportional representation is one of method and not of principle. In the former the minority is organized in a separate electoral roll. In the latter it is organized in well-disciplined, well-trained, and intelligent political parties. Both of them operate in precisely the same way. In both of them the members of political, agrarian or religious minority parties and also, of course, the majority parties vote only for their candidates. If it is objected that this system keeps the two religions apart, and creates parties in India which ought to be based on identity of political creed, the answer is, firstly, that religion in India dominates every sphere of one's life; and, in the second place, parties based on community of religious belief have played, are playing, and will continue to play, a very large part in Europe. In Ireland an overwhelming number of the Nationalist party were Catholics. In Germany the Centre Party, which is a party of Roman Catholics, has been a religious party through and through. In Jugo-Slavia the Bosnian Muslims return their own members, through the device of proportional representation, while other races are also represented in the legislature. In Spain, Poland, and other countries, where the voters are Catholics, very few who are not Catholics stand any chance of election to Parliament In Belgium and Holland the Clerical Party wields enormous power, and has just formed a Government, by a coalition with the Liberals. Whether such parties should exist or not is an entirely different question. The point is that such parties do exist, and a statesman must take the facts as they are. All these parties secure the representation of their leaders in Parliament by the device of proportional represenation. If this is so, if all minorities really vote only for those persons who represent their interests, and succeed in getting the same percentage of seats as the percentage of votes cast by them in the elections, why should separate electorates be condemned? If separate electorate causes friction, perpetuates division, and keeps up communal parties, so does proportional representation. In both systems the minority is guaranteed its representation. In the one, however, the seats are fixed; while in the other, the same result is brought about, and the same number of members returned to the Legislatures by a slightly different method, the method of single transferable vote, or other forms of proportional representation. If, therefore, it is desirable to do away with separate electorate, it is still more desirable to induce European countries to scrap their constitutions. If it is said that separate electoral rolls keep the two communities aloof, our answer is, first that, constituted as Indian society is at the present moment, hampered as it is by the impenetrable barrier of the caste system which forbids inter-marriage and inter-dining, which enjoins *chhut-chhat* upon all castes. Since the Reforms very few members of the depressed classes have been elected by caste Hindus to any municipal or district board, or to any Legislature, in spite of the fact that elections to thousands of seats for these elective bodies have taken place in India. Most important of all, the electors are hopelessly illiterate, and have not acquired those

habits of discipline and compromise which are a *sine qua non* of parliamentary government.

Under these circumstances, it is not practical politics of a common electoral roll. For the only result of such a scheme would be that Muslims would disappear from all the Legislatures and local bodies, as they have no party organization, and are in a hopeless minority in seven out of the nine provinces of British India. Proportional representation can succeed only if (1) there are well-organized parties; (2) there are plural member constituencies; (3) the voters are not illiterates and possess a fair level of intelligence; (4) and the minority is not scattered. None of these conditions exist in India. It is sometimes suggested that we might form a common or joint electorate in India, with a fixed reservation of seats for the minorities. A moment's reflection will convince anyone that this is even worse than the system of election by proportional representation. For Muslims are in a hopeless minority in seven out of the nine provinces of British India, and the Hindus can—and I am perfectly convinced they *will*—so organize themselves as completely to ignore the influence of Muslim votes on the election of Hindu members from joint constituencies. On the other hand, their effect on the elections of Muslim members will be decisive. Take the case of Madras, Central Provinces, United Provinces, and Bihar and Orissa. In the United Provinces Muslims form 14·28 per cent of the population. In elections the eighty or eighty-two per cent. of Hindu voters will return a Hindu member, who will be their genuine representative. In the case of election of a Muhammadan member the 80 per cent. of Hindu votes will be decisive, and the 14 per cent. of Muslim votes will be practically useless. Hence, while Hindu members will be genuine representatives of the Hindus, the Muslim member will be simply their puppet, as he will be returned practically by Hindu votes. Indeed, this device is a negation of the principle of proportional representation. For the latter system guarantees the election of representatives of minorities, who are only elected by the votes of the minority communities. This is, indeed, the essence of all systems of proportional representation. It deliberately and systematically gives the minority opportunity of voting for, and electing, its own representatives, by its votes alone. In the case of a joint electorate, with a fixed reservation of seats, this right is completely taken away from the hands of the minority community. It is told, in effect: "Yes, you will have a representative in the Legislature; but your representative will not be elected by you, but by the other party." If a representative is not elected by a party, how can he be said to represent that party? This method is so illogical and contradictory, is so completely opposed to all systems of minority representation which have been embodied in all European constitutions, that I am perfectly certain it will be unanimously opposed by all who have studied either Indian conditions or European constitutions. If a Muslim is elected by non-Muslim votes and is called by the Hindus a representative of our community it will serve to make the entire scheme of the constitution absolutely unworkable. It will provide a recurring cause of friction, quarrels, and even riots between the Hindus and the Muslims and the Government.

I do not think it is necessary for me to emphasise the need for the representation of our community in the Legislature and local and other bodies. It is well known that the conception of a territorial parliament, in which numerous important and essential interests and functions are not adequately represented, is being attacked by a number of influential writers. I need only refer to the works of persons like *G. H. D. Cole*, Sydney Webb and Dr. Harold Laski, who have attacked the theory of sovereignty, which has hitherto been regarded as the foundation of all modern theories of the State, and who desire a representation of people on the basis of functions. I cite this to emphasise the point that the conception of a territorial parliament, which is supposed to represent all interests and classes, is being slowly modified. The legislature in India should include representatives not merely of territories, but also of communities, and of interests. I am convinced that unless Muslims secure representation in the Legislatures the latter will become close corporations, and will be manipulated by a narrow oligarchy in its own interest.

(14) Conclusion.—Resolutions of the All-India Muslim League and the Muslim Parties Conference.

I will conclude this note, by pointing out that the Muslim community is practicably unanimously of the opinion that separate electorate is absolutely vital to its existence.

I may quote here a part of the resolution which I moved at the Lahore session of the All-India Muslim League in December, 1927 :—

Resolution 1 (*d*). " The idea of joint electorates, whether with or without a specified number of seats, being unacceptable to Indian Muslims, on the ground of its being wholly inadequate to achieve the object of effective representation of various communal groups, the representation of the Indian Muhammadans shall continue to be by means of separate electorates, as at present, provided that it shall be open to any community at any time to abandon its separate electorates in favour of joint electorates."

The political programme of Indian Muslims is embodied in the resolution passed on January 1, 1929, by the All-India Muslim Conference held at Delhi. The Conference was held under the presidency of a great leader of the Indian Muslims, His Highness the Aga Khan, and was one of the most representative gatherings of Muslim India.

Muslim India supports this resolution practically unanimously.

The relevant portions of the Resolution are :—

"(2) Whereas the right of the Muslim community to elect its representatives on the various Indian Legislatures through separate electorates is now the law of the land, and the Muslim community cannot be deprived of that right without its consent, and whereas, in the conditions existing at present in India, and so long as these conditions continue to exist, the representation in the various Legislatures and other Statutory Self-Governing Bodies of Muslim community, through its own separate electorates, is

essential, in order to bring into existence really representative democratic Government, and, so long as the Musalmans are not satisfied that their rights and interests are adequately safeguarded in the constitution, they will in no way consent to the establishment of joint electorates whether with or without conditions; and

(3) whereas, it is essential that the representation of the Musalmans in the various Legislatures and other statutory self-governing bodies should be based on a plan whereby the Muslim majority in those provinces where the Musalmans constitute a majority of the population, shall in no way be affected, and in the provinces in which the Musalmans constitute a minority they should have a representation in no case less than that enjoyed by them under the existing law; and

(4) whereas, representative Musalman gatherings in all the provinces in India have unanimously resolved that with a view to provide an adequate safeguard for the protection of Muslim interests in India as a whole, the Musalmans should have the right of one-third representation in the Central Legislature and this conference entirely endorses this demand; and

(5) whereas, for the purposes aforesaid, it is essential that Musalmans should have their due share in the Central and Provincial Cabinets; and

(6) whereas it is essential that no bill, resolution, motion or amendment regarding intercommunal matters shall be moved, discussed, or passed in any Legislature, Central or Provincial, if a three-fourths majority of the members of either the Hindu or Muslim community affected thereby in that Legislature oppose the introduction, discussion, or passing of such bill, resolution, motion or amendment; and

(7) whereas, on ethnological, linguistic, geographical and administrative grounds, the province of Sind has no affinity whatever with the rest of the Bombay Presidency, and its unconditional constitution into a separate province, possessing its own separate Legislative and Administrative machinery on the same lines as in the other provinces of India is essential in the interests of its people, the Hindu minority in Sind being given adequate and effective representation in excess of their proportion in the population as may be given to the Musalmans in the provinces in which they constitute a minority of the population; and

(8) whereas, it is essential, in the interests of the Indian administration, that provision should be made in the constitution giving the Musalmans their adequate share along with other Indians in all the services of the State and of all statutory self-governing bodies, having due regard to the requirements of efficiency; and

(9) whereas, the introduction of constitutional reforms in the North-West Frontier Province and Baluchistan, along such lines as may be adopted in other provinces of India, is essential not only in the interest of those provinces but also of constitutional advance of India as a whole, the Hindu minorities in those provinces being given adequate and effective representation in excess of their proportion in the population, as is given to the Muslim community in the provinces in which it constitutes a minority of the population; and

(10) whereas, having regard to the socio-political conditions obtaining in India, it is essential that the Indian constitution should embody adequate safeguards for the protection of Muslim culture, and for the protection, and promotion of Muslim education, language, religion, personal law, and Muslim charitable institutions, and for their due share in grants-in-aid ; and

(11) whereas, it is essential that the constitution should provide that no change in the Indian constitution, after its inauguration, be made by the Central Legislature, except with the concurrence of all the States constituting the Indian Federation ; and

(12) this conference emphatically declares that no constitution, by whomsoever proposed or devised, will be acceptable to the Indian Musalmans unless it conforms to the principles embodied in this Resolution."

This resolution summarises the demands of Indian Muslims admirably, and has the support of my community.

CHAPTER III.

What are the Rights of Minorities?

(1) History of the Problem.

The European Powers have been familiar with the difficulties of the problem of minorities since the Treaty of Vienna, 1814. As a result of the gradual dissolution of the Turkish Empire there had, during the nineteenth century, been established in Europe five new States—Greece, Serbia, Roumania, Bulgaria, and Montenegro. In each case the recognition of these States had been the subject of consultation between the Great Powers of Europe, and had been accompanied by certain conditions, the object of which was to insure religious freedom, and to prevent the newly-established States from interfering unduly with the freedom of commercial intercourse. These were incorporated in treaties, to which some or all of the Great Powers were parties. Again, in 1863, when a change of dynasty took place, and when the Ionian Islands were ceded to Greece, the new arrangements were embodied in a separate treaty between Great Britain, France, Russia and Denmark, in which this principle was re-affirmed. Both at the Congress of Paris and the Congress of Berlin of 1878 the application of these principles was not neglected, though their form was different. As Mr. Temperley points out, it may be said without any hesitation that by the end of the nineteenth century whenever a new State arose the European Powers assumed the right of imposing upon it certain principles of government, which had come to hold the position of *fundamental principles*, to which all civilized governments conformed. The Peace Conference of Paris, 1919, carried out these principles to their logical conclusion. The whole of the east and south-east of Europe was re-arranged; not only were the Turkish Dominions further reduced, but the Austro-Hungarian Empire had ceased to exist. Two new States were created—Poland and Czechoslovakia, and to others very great additions of territory were awarded. In the very nature of things it was inevitable that in every case these States were assigned considerable population, alien in race, language, and religion. Some guarantee, some security, must be provided that they should not be subjected to injustice, that they should not be deprived of their political rights, nor exposed to persecution. In some districts languages, races, and religions were so closely intermingled that the population of a single village might be divided between three classes. The principles underlying the policy of the Allies towards the minorities were clearly enunciated by Monsieur Clemençeau in a letter, dated June 24, 1919, addressed to the President of the Polish Republic. One extract from this letter will make the position of the Great Powers clear:—

"The situation with which the Powers have now to deal is new, and experience has shown that new provisions are necessary. The territories, now being transferred both to Poland and to other States, inevitably include a large population speaking languages and belonging to races different from that of the people with whom they will be incorporated. Unfortunately the races have been estranged by long years of bitter

nosfility. It is believed that these populations will be more easily reconciled to their new position if they know that from the very beginning they have assured protection and adequate guarantees against any danger of unjust treatment or oppression.

(2) What are the Safeguards for Minorities ?

The earliest case in which the rights of minorities were guaranteed by a treaty is that of the United Netherlands. This kingdom was created by the Congress of Vienna in 1814, and Catholic Belgium was united with Protestant Holland. The " Eight Articles " guaranteed religious freedom to all creeds, and the admissibility of all citizens to public offices and dignities. The Kingdom of Greece was created in 1830 by a Protocol signed by Great Britain, France, and Russia. The Protocol guaranteed religious freedom, and provided that all citizens shall be admissible to all public offices. The Protocol of the Congress of Constantinople of 1856, which established Moldavia and Wallachia as independent principalities, declared that all religions enjoyed equal liberty and equal protection in the two principalities. The Congress of Berlin, 1878, guaranteed protection to Jews and Muslims in the newly-created Balkan States.

It was, however, at the Peace Conference of Paris, in 1919, that the rights of minorities were adequately and effectively guaranteed. The difference between the earlier treaties, and the treaties signed in 1919, lay precisely in this, that while the former were concerned mainly with the establishment of religious freedom, the latter attempted a solution of those problems of race, language, education, and administration to which the existence of different races, religions, and languages in a State always gives rise. The earlier treaties confined themselves to the provision of freedom of conscience. This was, of course, a great advance on the doctrines propounded by the Treaty of Westphalia in 1640, which stated practically that the religions of princes determined the religious belief of their subjects. But modern world demands more than bare religious toleration. The proposal of the Great Powers were vehemently opposed by the new States. Poland protested strongly against it; Roumania put up a stubborn fight, while other Powers contended that it was an unjustifiable interference with the independence of sovereign States. The reply to M. Venezelos' contention that a supplementary minorities Protocol between Greece and Bulgaria was derogatory to the sovereignty of Greece was effectively given by Sir Austen Chamberlain, who stated that " the States which admitted these obligations admitted a restraint on their rights of sovereignty."

The principle on which all treaties is this that in the act of assigning new territories to an already existing State the Powers lay down conditions on which they transfer territories to such States. The following example of the Treaty with Poland will show clearly the scope and method adopted in these Treaties.

Article 7.

All Polish nationals shall be equal before the law, and shall enjoy the same civil and political rights, without distinction as to race, language, or religion.

Differences of religon, creed, or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions, and honours, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the Press, or in publications of any kind, or at any public meetings.

Notwithstanding any establishment by the Polish Government of any official language adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the courts.

Article 8.

Polish nationals who belong to racial, religious, or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage, and control at their own expense charitable, religious, and social institutions, schools, and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Article 9.

Poland will provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious, or linguistic minorities these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the *State, municipal, or other budget* for educational, religious or charitable purposes.

The provisions of this Article shall apply to Polish citizens of German speech only in that part of Poland which was German territory on August 1, 1914.

Article 10.

Educational committees appointed locally by the Jewish communities of Poland will, subject to the general control of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with Article 9, and for the organization and management of these schools.

The provision of Article 9 concerning the use of languages in schools shall apply to these schools.

Precisely the same terms were used and the same conditions incorporated in the Treaties signed by Czecho-Slovakia Yugo-Slavia and other countries. All these States incorporated the provisions relating to minorities in their constitutions. The following extracts from the constitutions of these countries are significant.

Czechoslovakian Constitution. Section 6, Article 130.

Article 130.

In so far as citizens of the Czechoslovak Republic are entitled by the common law to establish, manage, and administer, at their own cost, philanthropic, religious, or social institutions, they are all equal, no matter what be their nationality, language, religion, or race, and may, in such institutions, make use of their own language and worship, according to their own religious ceremonies.

Article 131.

In towns and districts in which there lives a considerable fraction of Czechoslovak citizens speaking a language other than Czechoslovak the children of such Czechoslovak citizens shall, in public instruction and within the bounds of the general regulations relating thereto, be guaranteed due opportunity to receive instruction in their own tongue. The Czechoslovak language may at the same time be prescribed as a compulsory subject of instruction.

Article 132.

In towns and districts where there is living a considerable fraction of Czechoslovak citizens belonging to some minority, whether in respect of religion or nationality or language, and where specific sums of money from public funds as set out in the State budget or in the budget of local or other public authorities, are to be devoted to education, religion or philanthropy, a due share in the use and enjoyment of such sums shall be secured to such minorities, within the limits of the general regulations for public administration.

Article 133.

The method of carrying out the principles embodied in Articles 131 and 132, and especially the interpretation to be assigned to the expression "considerable fraction," shall be determined by a special enactment.

Article 134.

Every manner whatsoever of forcible denationalization is prohibited. Non-observance of this principle may be proclaimed by law to be a punishable act.

Constitution of the Esthonian Republic.

Articles 20—23.

Article 20.

Every Esthonian citizen is free to declare to what nationality he belongs. In cases where personal determination of nationality is impossible, the decision shall be taken in the manner prescribed by law.

Article 21.

Racial minorities in the country have the *right* to establish autonomous institutions for the preservation and development of their national culture, and to maintain special organizations for their welfare, so far as it is not incompatible with the interests of the State.

Article 22.

In districts where the majority of the population is not Esthonian, but belongs to a racial minority, the language used in the administration of local self-governing authorities may be the language of that racial minority, but every citizen has the right to use the language of the State in dealings with such authorities. Local self-governing bodies which use the language of a racial minority must use the national language in their communications with governmental institutions, and with other local self-governing bodies which do not make use of the language of the same racial minority.

Article 23.

Citizens of German, Russian, or Swedish nationality have the right to address the central administration of the State in their own language. The use of these languages in the courts and in dealings with the local administrations of the State, or of self-governing bodies, shall be the subject of detailed regulations by special laws.

Constitution of Jugoslavia.

Article 16.

" Religious training is given according to the wishes of the parent or elders, based on their creeds, and in accordance with their religious beliefs. Technical schools will be established according to the needs of vocations. Education is given by the government without entrance fees, tuition, or other taxes. The manner in which private schools, their like, and under what conditions they shall be permitted, will be provided by law. All institutions for education are under government control. The government will aid the work of national education. *Minorities of race, and language are given elementary education in their mother-tongue, under provisions which will be prescribed by law.*"

Polish Constitution. Article 109 and Article 120.

Article 109.

Every citizen possesses the right of safeguarding his nationality and of cultivating his national language and customs.

Special laws of the State guarantee the full and free development of their national customs to minorities in the Polish State, aided by autonomous federations of minorities, to which statutory recognition may be given within the limits governing general autonomous federations.

Article 120.

In all educational establishments for the instruction of young people who have not reached the age of eighteen years, controlled in whole or part by the State, or by local autonomous bodies, the teaching of religion is compulsory for all pupils. The direction and control of this teaching is the province of the particular religious body, without prejudice to the supreme right of control reserved to the State educational authorities."

German Constitution. Articles 113, 146 and 149.

Article 113.

The foreign language parts of the population of the Reich may not be interfered with by legislative or administrative action in their free racial development, especially in the use of their mother tongue in education, as well as in the local administration and the administration of justice.

Article 146.

Within the municipalities, upon the request of those persons having the right to education, elementary schools of their own religious belief or of their '*Weltanschauung*' shall be established, provided that an organised school system in the sense of paragraph 1 is not thereby interfered with. The wishes of those persons having the right to education shall be considered so far as possible. Detailed regulations shall be prescribed by State legislation on the basis of a national law.

Article 149.

Religious instruction shall be a part of the regular school curriculum with the exception of secular schools. Such instruction shall be regulated by the school laws. Religious instruction shall be given in harmony with the fundamental principles of the religious association concerned, without prejudice to the right of supervision by the State.

Teachers shall give religious instruction and conduct church ceremonies only upon a declaration of their willingness to do so ; participation in religious instruction and in church celebrations and acts shall depend upon a declaration of willingness by those who control the religious education of the child.

Theological faculties in institutions of higher learning shall be maintained.

(3) Principles of safeguards.

I should like to emphasise a few points here :—

(1) In the first place, the clause relating to minorities are a *fundamental* part of the constitution.

(2) In the next place, the Great Powers, through the League of Nations, have made themselves responsible for their execution. The

following example from Article 69 of the Treaty with Austria will suffice :—

"Austria agrees that the stipulation in the foregoing Articles of this section, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern, and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations."

From this it is perfectly clear that *even the sovereign European States* cannot modify the provisions relating to racial, religious and linguistic minorities *without the consent of the League of Nations*. Precisely the same conditions are embodied in every treaty with other Powers.

(4) Safeguards in British Dominions.

The English colonies themselves have been greatly troubled by the problem of minorities. The history of Canada from 1760 to the present day contains numerous incidents throwing a vivid light on the relations between the English and the French in Canada. Every student of Lord Durham's classical report on Canada knows the difficulties experienced by British administrators in effecting reconciliation between the two races. Let me quote the following from Durham's letter, dated August 9, 1838:—

"If the difference between the two races were one of party or principles only, we should find on each side a mixture of persons of both races, whereas the truth is that, with exceptions which tend to prove the rule, all the British are on one side, and all the Canadians (French) are on the other. The mutual dislike of the two classes extends beyond politics into social life, where, with some trifling exception, all intercourse is confined to persons of the same origin. Grown-up persons of a different origin seldom or never meet in private society; and even the children, when they quarrel, divide themselves into French and English, like their parents." (*Documents of the Canadian Constitution*, 1759—1915, *by W. P. M. Kennedy.*)

This is borne out by the highest authority on Canadian history, Professor G. M. Wrong says in his work on the *Federation of Canada*, that "our language, our institutions, and our laws was the cry then of the French in Canada, and it has continued ever since". The English Government succeeded in reconciling these differences, and establishing peace in Canada. How was the problem solved? Let me quote a passage from the speech of Lord Carnarvon, who stated in a speech in the House of Lords in introducing the *British North America Bill*, on February 19, 1867 :—

"Lastly, in the 93rd clause, which contains the exceptional provisions to which I referred, your Lordships will observe some rather complicated arrangements in reference to education. I need hardly say that that great question gives rise to nearly as much earnestness and division of opinion

as on this side of the Atlantic. This clause has been framed after long and anxious controversy, in which all parties have been represented, and on conditions to which all have given their consent. It is an understanding which, as it only concerns the local interests affected, is not one that Parliament would be willing to disturb, even if in the opinion of Parliament it were susceptible of amendment; but I am bound to add as the expression of my own opinion that the terms of the agreement appear to me to be equitable and judicious. For the object of the clause is to secure to the religious minority of one Province the same rights, privileges, and protection, which the religious minority of another Province may enjoy. The Roman Catholic minority of Upper Canada, the Protestant minority of Lower Canada, and the Roman Catholic minority of the Maritime Provinces, will thus stand on a footing of entire equality. But in the event of any wrong at the hand of the local majority, the minority have a right to appeal to the Governor-General in Council, and may claim the application of any remedial laws that may be necessary from the Central Parliament of the Confederation."

Article 93 of the British North America Act of 1867 referred to above, may be quoted here :—

"In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following Provisions :—

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any class of Persons have by Law in the Province at the Union.

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and Schools Trustees of the Queen's Roman Catholic Subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec.

(3) Where in any Province a system of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's subjects in relation to Education.

(4) In case any such Provincial law as from Time to Time seems to the Governor-General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor-General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such case and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due Execution of the Provisions of this Section, and of any Decision of the Governor-General in Council under this Section."

This section has been amplified, and the Governor-General in Council can refer the matter to the Supreme Court. The amendment is as follows:—

[Section 4. Repealing Section 37, Capital 135, Revised Statutes, 1886.]

"(1) Important questions of law or fact touching provincial legislation, or the appellate jurisdiction as to educational matters vested in the Governor in Council by *The British North America Act*, 1867, or by any other Act or law, or touching any other matter with reference to which he sees fit to exercise this power, may be referred by the Governor in Council to the Supreme Court for hearing or consideration; and the Court shall thereupon hear and consider the same.

(2) The Court shall certify to the Governor-General in Council for his information, its opinion on questions so referred with the reasons therefor, which shall be given in like manner as in the case of a judgment upon an appeal to the said Court, and any Judge who differs from the opinion of the majority shall, in like manner, certify his opinion and his reasons."

The results of this settlement are thus summed up by Professor G. M. Wrong, in his book, "*The Federation of Canada*" (1867—1917).

"The true, and, I may hope, the final solution was to be found neither in isolation nor in complete union, but rather in both union and separation; union in the great affairs which touch trade, tariffs, public services, like the post office and the administration of justice; separation in respect to those things in which the two races had differing ideals, such as, religion and education."

The Bilingual School Question has aroused intense excitement in Canada for more than half a century.

(5) Racial Conflicts in the Union of South Africa.

The problem of the rights of the two white races in South Africa bristled with difficulties. Let me quote Hon'ble Mr. R. H. Brand, who in his book entitled the "*Union of South Africa*" deals with this question:—

"The new spirit animating the leaders of both sides has been generously welcomed by both the British and Dutch communities. But in the working out of the constitution the differing ideals of the two races cannot fail to clash. Bilingualism, whether in education or in the public service, will cause trouble for many years. Recent events are a sufficient proof. The education law of the Orange River Colony, whatever its merits or demerits, has certainly been read by the British population as an attempt to deprive their children of any proper instruction in the English tongue. Efforts have been made to found private schools where English can be properly taught. The Government has dismissed English and Scotch inspectors for their alleged unsympathetic administration of the law. A deputation has been sent to England to represent the grievances of the British people. There is every sign of strong feeling. Less is heard of the difficulties in the Transvaal, where the law is less rigid. But any one who has any knowledge of the subject is aware that there, too, administration is hampered by constant friction, arising from local quarrels and

jealousies over language. Nevertheless one cannot doubt that these difficulties will in time disappear. There are influences at work too strong to be controlled by legislation. As a general rule English parents are prepared that their children shall learn Dutch; while Dutch parents see how essential is a knowledge of English. A story which well illustrates this tendency is told by a small dorp in the Orange River Colony. A Scotch parent complained to the Education department that his small daughter had been submitted in the playground of the school to the indignity of having a wooden collar placed round her neck. On inquiry it was found that the parents, most of whom were Dutch, thinking that too little English was taught in school hours, had asked that that language might be used during the play hours. There had been invented, in consequence, a mode of punishment which consisted in fastening a wooden collar round the neck of any child who used a Dutch word in the playground."

(6) The Hungarian Law for the protection of Minorities.

The new kingdom of Hungary issued a decree on August 21, 1919, for the effectual protection of its linguistic, racial and religious minorities. It provides comprehensive safeguards for the protection of people who belong to non-Hungarian races, and is of special interest to minorities in India.

1. "All Hungarian citizens have completely equal rights.

2. "Subjects of the State belonging to racial minorities can freely make use of their native language in the Hungarian Parliament, in district and communal assemblies, as well as in their committees, wherever they have the right to make speeches.

3. "The laws and decrees of the Government are to be published in the languages of all the racial minorities; the Magyar text is authoritative. District and communal regulations will be published in the administrative language of the communal area, and also in the language used there at the meetings of the administrative bodies.

4. "The administrative language of a district assembly is fixed by the district at a general meeting. Proceedings are to be reported in that language and also in those languages which at least one-fifth of the members of the departmental representative body desire to use. The administrative language is the authoritative one.

5. "The district assemblies can make use of their administrative language in all their requests and decisions, but if this language is not Magyar they are bound to subjoin a Magyar text.

6. "The administrative language of communal bodies is determined by their assembly. As regards the reports of their proceedings, see paragraph 4.

7. "The communal bodies can use their administrative language on their requests and decisions.

8. "Subjects of the State belonging to racial minorities can use their native language in communicating with legislative bodies, the Government, the Ministries, district and communal administrative authorities as well as with the public services.

9. "The administrative bodies will issue their decision and replies in the same language as the applications, complaints and requests submitted to them, and in communicating with the communal bodies, societies, institutions, and private persons they will use the same language as the latter, provided it is the administrative language of the area.

10. "Whosoever requires the protection of the law and the assistance of the law courts, either as plaintiff, defendant or appellant, can use his native language, provided that it is the administrative language for the area within the jurisdiction of the court concerned.

11. "The law courts will issue their decisions in the same language as the application, etc. The evidence of witnesses and other judicial procedure will be taken in the language of the witness or the parties interested with the same proviso as in paragraph 10. Under the same conditions, appeals will be made in the language of the appellant provided that the court is aware which language this is. All other judicial decisions, including the verdict of the highest appeal court, will be given in the language of the interested parties at their request.

12. "Ecclesiastical administrative authorities, religious communities and parishes, can decide freely what is to be the official language of their church or the language of instruction in their schools and they can make use of it in their dealings with State and autonomous administrative bodies.

13. "Care must be taken that citizens of the State belonging to racial minorities and living in sufficiently considerable compact masses in the territory of the State may have facilities in the State educational establishments of the area where they reside for their children to be educated in their native language as far as the initial stages of higher education. In the universities special chairs will be established for the study of the languages and literatures of each racial minority.

14. "Municipalities, communal areas, churches, parishes or private persons belonging to any minority may found elementary, secondary or higher schools from their own resources or jointly. For this purpose, and in the interests of developing the national and economic resources, citizens of the State belonging to racial minorities can form societies and make collections under the legal control of the State. Educational and other establishments founded in this manner will enjoy the same rights as other schools and establishments. The founders will decide what language is to be used in them.

15. "The fact of belonging to any racial minority will not be an obstacle in the way of attaining rank or employment, whatever they may be. *The Government binds itself to see that judicial and administrative posts especially those of sub-prefects are filled wherever possible, by persons belonging to racial minorities and knowing their languages.*

Officials now in office are obliged to take the necessary steps so as to be able within a period of two years to satisfy the linguistic requirements of racial minorities inhabiting the area in which they are carrying out their duties.

16. "The competent Ministerial authorities are entrusted with carrying out the present decree in co-operation with the Minister of racial minorities, who will keep a continual check on the manner in which this is done, and who will organize for this purpose a special section for each of the racial minorities.

"The present decree will come into force on the day of its publication."

(7) The Czechoslovakian Law for the protection of the Languages of Minorities in Czechoslovakia.

The Constitution of Czechoslovakia provided for the passing of a language law for the protection of minorities. This promise was fulfilled in a law passed on February 29, 1920, by the Czechoslovakian Government. It is a document of far-reaching importance, and lays down detailed and minute provisions for the protection of the languages of minorities. The Republic, it will be noticed, contains three million Germans besides other races who speak different languages, belong to different races and profess different religions. The law is as follows:—

Article 1.

"The Czechoslovak language shall be the State official language of the Republic (Article 7 of the Treaty made between the leading Allied and Associated Powers and the Czechoslovak Republic and signed at St. Germain-en-Laye on September 10, 1919).

It is, thus, in particular the language:—

(1) In which the work of all the courts, offices, institutions, undertakings, and organs of the Republic shall be conducted, in which they shall issue their proclamations and notices as well as their inscriptions and designations. Exceptions to this section are laid down in Article 2 and Article 5 as well as in Article 6 relating to Russinia.

(2) In which the principal text on State and other bank notes shall be printed.

(3) Which the armed forces of the country shall use for the purpose of command and as the language of the service; in dealings with men and companies not knowing this language their mother tongue may also be used.

Detailed regulations will be issued as to the duty of State officials and employees, as well as officials and employees of State institutions and undertakings to know the Czechoslovak language.

Article 2.

In respect of national and language minorities (Chap. I, Treaty of St. Germain) the following rules shall apply : —

" It shall be the duty of courts, offices and organs of the Republic whose competence relates to a jurisdictional district in which, according to the latest census, at least 20 per cent. of the citizens speak the same language—and that, a language other than Czechoslovak—to accept (in all matters which they have to settle on the ground of their competence applying to such a district) from any member of this minority any complaints in this language, and to deal with the complaints not only in the Czechoslovak language, but also in that in which the complaint itself is presented. Where there are several district courts in one community, that whole community shall be deemed to be a single jurisdictional district.

" It shall be laid down by regulations to what extent and for what courts and offices it will be possible to restrict the settlement of cases to the language of the parties themselves. These courts and offices are those whose competence is limited to one district, namely, a district with such a national minority, as well as courts and offices immediately subordinate to them.

" Under similar conditions, it is the duty of the public prosecutor to frame the charges against an accused speaking another tongue in this language, too, or even in this language alone. The executive authority shall determine in such cases what language shall be used.

" If the party to any matter is not the initiator of the proceedings, he shall (if the other conditions of Article 2 are fulfilled) be entitled on the same principles to have his case dealt with also in his own language, or even in it alone so far as it is known or otherwise at his request.

" In districts where there lives a national minority in the terms of Article 2, the language of the national minority shall be used concurrently with the Czechoslovak language in proclamations and notices issued by the State courts, offices and organs and for their inscriptions and designations.

Article 3.

It is the duty of autonomous offices, representative councils and all public corporations in the State whatsoever to accept and to deal with oral or written matter in the Czechoslovak language.

It shall always be possible to make use of this language in meetings and conferences: proposals and suggestions put forward in this language must be dealt with.

The State executive authority shall determine upon the language to be used for public proclamations and notices and for the inscriptions and designations for which the autonomous offices are responsible.

It is the duty of the autonomous offices, representative councils and public corporations to accept—under the conditions of Article 2—all matters presented to them in a language other than Czechoslovak and to deal with the same and also to permit the use of another language in meetings and conferences.

Article 4.

The State offices, using the State official language, shall, in their official proceedings in those parts of the Republic which before October 28, 1918, pertained to Kingdoms and Lands represented in the Imperial (Austro-Hungarian) Council or to the Kingdom of Prussia, use regularly the Czech language in Slovakia.

Matters presented in the Czech language are officially dealt with in the language in which they were presented.

Article 5.

The instruction in all schools established for members of a national minority shall be given in their language. Likewise educational and cultural institutions set up for them shall be administered in their language (Article 9, Treaty of St. Germain).

Article 6.

The Diet which shall be set up for Russinia shall have the right reserved to it for settling the language question for this territory in a manner consonant with the unity of the Czechoslovak State (Article 10, Treaty of St. Germain).

Until this settlement has been made this law shall apply, due regard, however, being paid to the special circumstances of that territory in respect of language.

Article 7.

Disputes regarding the use of a language in courts, offices, institutions, undertakings and organs of the State as well as in the autonomous offices and public corporations shall be settled by the competent organs of State control as matters of State administration detached from the causes of which they arose.

Article 8.

Details as to the carrying out of this law shall be fixed by the State executive authority which will, in the spirit of this law, lay down rules regulating the use of languages for autonomous offices, representative bodies and public corporations, as well as for those offices and public organs whose competence extends to districts which are less than jurisdictional districts, or for organs which have no district of their own.

The rules shall also prescribe what measures shall be taken towards facilitating the dealings of officials with persons who do not speak the language in which the court, office, or organ conducts its business in the

sense of this law. They shall also prescribe measures to be taken to protect the different parties from legal damage which might accrue to them from ignorance of the language in question.

Exceptions to the terms of this act necessary for securing undisturbed administration may also be made by regulation for the period of 5 years, commencing from the day on which this law comes into force.

Finally, rules shall be laid down which are essential for securing the successful carrying out of this law.

Article 9.

" This law shall come into force on the day on which it is promulgated. It abrogates all rules relating to language which were in force previous to October 28, 1918. All Ministers are entrusted with the execution of this law."

(8) The significance of these minority clauses to minorities in India.

The minority clauses are of profound importance to the minority communities. It is futile to apply the conception of nationality prevalent in England or France to Indian conditions. People who are fond of using the word " notion " glibly, are either ignorant of the factors that have brought about the " unitary and organic states " in Western Europe, or deliberately shut their eyes to inconvenient facts, and act and talk on the assumption that no differences exist. It is the aim of every Indian to remove them, it is the desire of every patriot, to bridge the gulf. But this is not achieved by merely asserting that no differences exist. A better method would be to analyse them, to investigate them calmly, and to find remedies for them. As Dr. Harold Temperlly says in his classical work entitled the *History of the Peace Conference of Paris of* 1919 (Vol. V, page 138) " If this system has succeeded in this country (England), it is owing to two reasons: (1) the presence of a very strong government with traditions of over 1,000 years, and the inherited political experience of a nation long accustomed to self-administration; (2) natural frontiers which are unalterable, so that the very possibility of the secession of any part of the United Kingdom is excluded."

In Hungary, the Slovaks were subjected to humiliating treatment. Their children were forced to learn the Magyar language; the bulk of the elementary, secondary and University teachers were Magyars; and very few Slovaks were able to enter the Hungarian parliament. Their nomination papers were, in most cases, rejected, while troops were quartered in the polling booths; elections were skilfully manipulated, and a systematic attempt was made to denationalise them. This reign of terror lasted nearly 60 years, and at last the Slovaks got their chance, and united themselves with the Czechs to found the kingdom of Czechoslovakia. Take the case of Roumania. That country acquired the whole of Transylvania, which contains an overwhelming number of Hungarians. In an exhaustive work on the *Minorities in Roumanian Transylvania* by Dr. Szasz, the author shows the methods employed by the Roumanian Government to coerce and terrorise the racial minorities in Transylvania. Most of the old officials

have been dismissed; the old University has been Roumanised; Hungarian language is systematically discouraged; their schools have been closed; their religion condemned; soldiers have been, and are quartered at the time of election to terrorise the Transylvanians; ballot boxes are stuffed, and the property of the minorities has been confiscated on the pretext of an agrarian law. Mr. Szasz thus concludes his book on the Transylvanian minorities in Roumania: "It is only when the rights of minorities will be recognized in Roumania, based on international treaties, and not dependent upon party politics; only when their problem will become, not a phrase, but a reality, that they will be able to follow a policy which will serve both their own interests and those of Roumania."

(9) Representation of minorities in the public services.

The Magyar population in Slovakia does not exceed 20 per cent. yet, as shown by Mr. Street, in *Democracy in Hungary*, the Magyar minority in Czechoslovakia obtained better terms as regards education than were promised them in the Treaty. The latter only provides for facilities for elementary education for the racial minorities, whereas the Magyar minority not only gets this in greater proportion than its strength warrants, but also gets the advantages of higher elementary and secondary education in its own language. As for the Slovak majority, their lot is so different now that Slovakia is released from the Magyar yoke, that it is almost unrecognizable. The population has now complete freedom in educational matters, and enjoys many facilities. Instead of being compelled to imbibe what knowledge it could in a foreign language, it has at its hand a modern and extensive system of schools of all grades. The outlay on education in Slovakia for the year 1921-22 was:—

For State elementary schools	.. ..	41,661,957 Crowns.
For Private elementary schools	.. ..	90,808,142
	Total ..	132,470,099

Out of this total expenditure, the following grants were made for non-Slovak schools:—

	State schools.	Private schools.
Magyar	.. 5,770,173	24,245,763
German	.. 1,587,818	4,267,981
Roumanian	.. 141,650	4,177,172
Total	.. 7,499,141	32,690,916

This shows that the grants-in-aid are apportioned among the different races equitably. Mr. Street remarks, "The Magyar schools receive 22·5 per cent. of the whole sum spent on elementary education in Slovakia."

As regards the admission of Magyars to the public services, the Czechoslovak Government adopts an entirely unprejudiced attitude. The following figures show the distribution of nationalities in the various branches of the public services of Slovakia for the year 1921. It will be remembered that Magyars form only 20·6 per cent. of the population of Slovakia: —

	Czechoslovaks.	Magyars.
1. Political administration	1,763	397
2. Posts, Telegraphs and Telephones	4,676	1,685
3. Higher elementary school teachers	413	137
4. Secondary school teachers	431	138
5. Doctor and employees in State Hospital.. ..	248	88
6. Judges and Lawyers	198	160
7. Public Works	869	144
8. Agricultural service	993	576

From the above it will be seen that the proportion of Magyars in the public services of Czechoslovakia is far greater than the actual strength of the Magyar minority would warrant. The figures before the War are illuminating. Here they are :—

	Magyars.	Slovaks.
Judges and official lawyers in Slovakia	461	0
In the whole of Hungary	4,756	1
Law courts and prison officials in Slovakia	805	10
Secondary school teachers in Slovakia	638	10
Medical officers in Slovakia	713	26
In the whole of Hungary	4,914	25

It is necessary to point out that 70 per cent. of the inhabitants of Slovakia were Slovaks, and only 25 per cent. understood Magyar.

(10) The Principles on which the Minorities Treaties are based.

Principal Robertson has well said that in 1815 the remedy for twenty-five years of war and revolution was sought in a return to the past. "In 1919, the settlement capitalised the future; racial nationalism, expressed in the terms of States, big or little, was by its homœopathic power to expirate the evils of the body politic, and the nationalist State was to become the unit of a new system of international relations. The guarantees of the Rights of Minorities, the doctrine and machinery of mandates, and the Plebiscites are only logical deductions in a political form from this explicit adoption of racial nationalism alike as the criterion and the aim of political justice." The right of a racial group to achieve self-expression is not destroyed, because the group is neither sufficiently numerous nor sufficiently concentrated to justify its existence as a separate and sovereign political unit, with a definable geographical area for its independent existence; it may either be a scattered or relatively a weak element, reckoned in numbers, but in either case, if a definable character be accepted as the criterion, it is entitled to guarantees against denationalisation, which means the atrophy by enforced disuse of racial characteristics. "This denationalisation under the pressure of political, economic, or social institutions was the real grievance of many of the racial groups which made, for example, the Austro-Hungarian Empire. It could only be remedied

either by cutting the group out of the Empire, and investing it with a separate existence, or by guaranteeing its 'rights' against the arbitrary power of a majority." Both these methods have been adopted. Some groups have been invested with separate political existence. Poland, Czechoslovakia are classical examples. Others have been guaranteed their rights by the Minorities Treaties discussed in this *Representation*.

(11) The Protection of Minorities in the German-Polish Convention relating to Upper Silesia, signed on May 15, 1922, at Geneva.

The Polish-German Convention contains most valuable information relating to the rights of minorities, and is of paramount importance to minorities in India. The portion dealing with education is most suggestive and helpful to Indian Muslims. Part III deals with the protection of minorities, and is divided into two divisions. Divisions II and III deal exhaustively with the religion, education, etc., of the minorities, and are as follows :—

German-Polish Convention signed in May, 1922.

CHAPTER I.—GENERAL PROVISIONS.

Article 73.

1.—Poland and Germany undertake that the stipulations contained in Articles 66, 67 and 68 shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

2.—The tribunals and courts of justice, including the administrative, military, and extraordinary tribunals, shall be competent to examine whether the legislative or administrative provisions are not contrary to the stipulations of the present Pact.

Article 74.

The question whether a person does or does not belong to a racial, linguistic or religious minority, may not be verified or disputed by the authorities.

CHAPTER II.—CIVIL AND POLITICAL RIGHTS.

Article 75.

1.—All German nationals in the German portion of the plebiscite territory on the one hand, and all Polish nationals in the Polish portion on the other hand, shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

2.—Legislative and administrative provisions may not establish any differential treatment of nationals belonging to a minority. Similarly, they may not be interpreted or applied in a discriminatory manner to the

detriment of such persons. The above principally concerns the supply of products subject to a centralised system of exploitation, such as articles of food, coal, fuel, paper used in the printing of newspapers, etc., the distribution of means of transport, the assignment of premises to persons, companies, or associations, the granting of official authorisations relating to transfers of real property and ownership, measures relating to the distribution of land, etc.

3.—Nationals belonging to minorities shall, in actual practice, receive from the authorities and officials the same treatment and the same guarantees as other nationals; in particular the authorities and officials may not treat nationals belonging to minorities with contempt nor omit to protect them against punishable acts.

Article 76.

Nationals belonging to minorities may not be placed at a disadvantage in the exercise of their right of voting, noteably in the case of a referendum, and of their rights of suffrage and eligibility as regards all elections to representative assemblies of the State and other public bodies, as well as for elections to representative bodies dealing with social matters. In particular, a knowledge of or familiarity with the official language may not be required of the said nationals for these purposes, without prejudice, however, to the provisions concerning the official language and the language in which the meetings may be conducted.

Article 77.

All nationals shall be treated on a footing of equality as regards admission to public employments, functions and honours, including military ranks, and to public establishments, and as regards the granting of degrees, distinctions, etc.

Article 78.

1.—Nationals belonging to minorities shall enjoy the same rights as other nationals as regards the right of association of meeting and the creation of foundations.

2.—The fact that associations devote themselves to the interests of minorities as regards their language, culture, religion, ethnical character or social relations, cannot constitute a reason for prohibiting these associations, hindering their activities or preventing them from acquiring legal status.

Article 79.

1.—Subject to the general laws in force, nationals belonging to a minority shall be entitled to issue publications and printed matter of all kinds in their own language, as well as to import them from abroad and distribute them.

2.—In so far as newspapers or periodicals are under an obligation to insert official communications, they shall be entitled to require that a

[redacted]tion in the language of the newspaper or periodical be supplied them with a view to insertion and that the current price for insertion be paid them. In the case of an insertion in two languages, payment may only be demanded for insertion in the official language. The publication of judgements and corrections required in virtue of a judicial decision shall not be considered as official communications.

Article 80.

Nationals belonging to minorities shall be treated on the same footing as other nationals as regards the exercise of agricultural, commercial or industrial callings, or of any other calling. They shall only be subject to the provisions in force applied to other nationals.

Article 81.

1.—Nationals belonging to minorities shall have the right to establish, manage and control at their own expense charitable, religious, cultural or social institutions. Subject to State supervision, the existing institutions may continue to carry on their activities without hindrance. They shall retain their property and all their acquired rights in conformity with the stipulations of Article 4.

2.—Institutions may bring from the territory of the other Contracting Party the ecclesiastics, teachers, doctors, sisters of charity, deaconesses, nurses and other similar personnel necessary for their activities, whatever may be the nationality of such persons. This stipulation does not, however, affect the provisions relating to the entry, residence and departure of aliens. The diplomas and professional degrees of the persons in question, which are valid in the territory of the other Contracting Party, shall also be recognized as valid for the exercise of their profession within the sphere of activity of the institutions which have introduced them.

3.—The importation of the necessary books, works of edification, medical and surgical instruments, drugs, etc., is authorised, provided that the general prohibitions applicable to all nationals of the State do not oppose it. This stipulation shall in no way invalidate the customs regulations.

Article 82.

The following articles apply to persons who are entitled to retain their domicile in one of the two parts of the plebiscite territory:

Article 76, as regards representative church assemblies or representative social bodies.

Article 77, except as regards admission to public functions and employments, including honorary functions and military ranks.

Article 78 (1), except as regards political associations.

Article 78, paragraph 2; Article 79; Article 81.

Article 83.

The Contracting Parties undertake to assure full and complete protection of life and liberty to all the inhabitants of the plebiscite territory, without distinction of party, nationality, language, race or religion.

CHAPTER III.—RELIGION.

Article 84.

§ 1.

The relations of the State with the religious confessions shall be governed by the law after hearing the competent representatives of these confessions in conformity with the principles laid down in the present chapter.

§ 2.

By the term " religious confessions " in the present chapter is meant all organised religions.

Article 85.

All the inhabitants of the plebiscite territory shall be entitled to the free exercise, whether public or private, of any creed, religion or belief whose practices are not inconsistent with public order or public morals.

Article 86.

1.— Religious confessions, parishes and Jewish communities, as well as orders and congregations, shall be entitled to administer their affairs and to direct and supervise their institutions in full liberty, subject to the laws promulgated to maintain public order and public morals.

2.—They shall be free to employ the language of their choice in all affairs of internal administration. Religious confraternities and societies may do the same.

Article 87.

§ 1.

Within the scope of the general laws and without prejudice to the rights of third parties or rights resulting from agreements between the State and the Holy See, religious confessions, parishes and Jewish communities, as well as orders and congregations, shall be entirely free to appoint ecclesiastics, functionaries, assistants, sisters of charity, deaconesses and other auxiliary personnel.

§ 2.

They may, in so far as they belong to a religious minority, for this purpose introduce from abroad persons such as those mentioned in § 1 who need not change their nationality and whose diplomas and professional degrees shall be recognised.

§ 3.

1.—Religious confessions, parishes and Jewish communities, as well as orders and congregations, which include members of a racial or linguistic minority, shall be free to provide for such members divine service, the cure of souls and religious instruction in their own language.

2.—In the event of persons belonging to a racial or linguistic minority forming the majority in a parish or Jewish community the provisions of § 2 shall be applicable.

Article 88.

Religious confessions, parishes and Jewish communities, as well as orders and congregations, may maintain, even outside the territory of the State, relations of a purely ecclesiastical character with a view to co-operation in regard to creed, doctrine, worship and charity, and they may receive gifts for this purpose from their co-religionists abroad.

Article 89.

1.—Persons belonging to all confessions shall enjoy the legal holidays which were allowed them before the transfer of sovereignty. These holidays may not be abolished or changed without the consent of the competent representatives of the religious bodies in question.

2.—The question of the Sabbath is settled by Article 71.

Article 90.

The ecclesiastics and staff of religious confessions, parishes and Jewish communities, as well as of orders and congregations, may freely perform their duties whatever their origin or language.

Article 91.

Religious confessions, parishes and Jewish communities belonging to a religious minority shall be entitled to an equitable share of the sums provided for religious or spiritual purposes in the State, municipal or other budgets, taking into account the requirements of the nationals belonging to the religious minorities.

Article 92.

The Contracting Parties undertake to permit parishes and Jewish communities to take copies of the State tax returns to serve as a basis for the allocation of church taxes in the said parishes or communities.

Article 93.

1.—All religious confessions, parishes and Jewish communities and all orders and congregations existing and recognised in the plebiscite territory shall continue to be recognised therein.

2.—Taking into account the change of sovereignty, they shall be obliged to bring their organisation into line with the laws promulgated to maintain public order and public morals and with the provisions of the present chapter.

3.—For the purposes of this adjustment they shall be allowed a transitional period lasting until July 1, 1923. This stipulation does not apply to the agreement which has been or may hereafter be concluded between the Polish State and the Holy See. It shall also not apply to the provision of Article 95.

Article 94.

1.—Ecclesiastics, church functionaries, sisters of charity and deaconesses at present performing their duties may continue to do so without let or hindrance.

2.—With the object of developing mutual good feeling, the Contracting Parties shall make representations to the ecclesiastical authorities with a view to an exchange of Catholic priests between the two parts of the plebiscite territory in conformity with the provisions of canon law.

Article 95.

Parishes and Jewish communities, as well as their ecclesiastics, functionaries and pensioners, may freely settle their economic relations with the ecclesiastical provident institutions (funds, etc.) to which they belong on the date of the transfer of sovereignty, and continue these relations as long as it remains impossible to substitute institutions able to replace them completely. The same shall apply to the survivors of the persons mentioned above.

Article 96.

§ 1.

Establishments, foundations and other institutions with religious or charitable aims whose activities extend to the two parts of the plebiscite territory may continue to exercise such activities until separate institutions have been organised for each part of the territory.

§ 2

In the event of parishes or Jewish communities being divided by the frontier line between the two parts of the plebiscite territory, those concerned may take the necessary measures with a view to sharing in the upkeep of the movable and immovable property of the said parishes or communities.

Chapter IV.—Education.

First Section.—Private Education.

Article 97.

For the purposes of the present chapter, the term private education includes the teaching given by private schools and private educational establishments, whether they take the place of State schools or whether they do not, as in the case of the popular universities, academics of music, etc., as well as private teaching given out of school or at home.

Article 98.

1.—Nationals who belong to minorities may establish manage, supervise and maintain at their own expense private schools or private educational establishments and give private teaching, provided that the requisite conditions for the safety of the children are fulfilled and provided that the teachers or tutors possess the legally necessary qualifications, are domiciled in the territory of the State in which the teaching is given, and do not take advantage of their profession to engage in activities hostile to the State. In cases in which an authorisation is required, it shall be granted if the conditions specified above are fulfilled.

2.—Private instruction out of school given by teachers, tutors of good moral character or by parents is authorised.

3.—The questions whether the private instruction referred to in paragraphs 1 and 2 is necessary or not may not be taken into consideration.

Article 99.

1.—The official language may not be imposed as the language of instruction in the private schools of linguistic minorities or in private teaching.

2.—The official language may only be imposed as a part of the curriculum in private schools taking the place of State schools of the same category.

Article 100.

1.—Any person who proves, by means of an official diploma, that he or she possess the status of public teacher in one of the two States shall be considered as duly qualified to give instruction in a private school. To give private teaching out of school or to teach subjects in schools, not forming part of the regular curriculum, it is sufficient to produce a certificate of capacity to give such teaching delivered by a competent authority of one of the two States.

2.—The other provisions relating to the admission of aliens to act as teachers in private schools shall be so applied that the private schools of a minority can recruit some of the members of their teaching staff from abroad.

Article 101.

German nationals domiciled in Polish Upper Silesia may not be forbidden from attending private schools or private educational establishments in Polish Upper Silesia. Similarly, Polish nationals domiciled in the German part of the plebiscite territory may not be forbidden from attending private schools or private educational establishments in the German part of the plebiscite territory.

Article 102.

The right granted to a minority to supervise private schools in no way invalidates the right of supervision belonging to the State authorities.

Article 103.

1.—Children belonging to a minority and receiving, at home or in a private school, a sufficient private education shall not be obliged to attend a State school.

2.—The Government educational authorities shall decide whether the private teaching in question is or is not sufficient to take the place of public education.

Article 104.

The special provisions relating to private professional or supplementary instruction will be found in Article 115; and those relating to private secondary and higher teaching in Articles 128—130.

SECOND SECTION.—PUBLIC ELEMENTARY EDUCATION.

Article 105.

§ 1.

For the purposes of the present chapter elementary schools shall be taken to mean schools, other than extension schools, which children must attend if the prescribed teaching is not given to them in any other manner.

§ 2.

The needs of the minorities as regards public elementary education shall be supplied by means of the following educational institutions:—

(*a*) *Elementary schools employing the minority language as the language of instruction*—i.e., *minority schools*:

(*b*) *Elementary classes employing the minority language as the language of instruction, established in the elementary schools employing the official language*—i.e., *minority classes*;

(*c*) *Minority courses, including*:

(1) *Teaching of the minority language* (*minority language courses*);

(2) *Religious teaching in the minority language* (*minority religious courses*).

Article 106.

§ 1.

1.—A minority school shall be established on the application of a national supported by the persons legally responsible for the education of at least 40 children of a linguistic minority, provided these children are nationals of the State and that they belong to the same school district (*Schulverband—związek szkolny*), that they are of the age at which education is compulsory, and that their parents intend to send them to the said school.

2.—If at least 40 of these children belong to the same denomination or religion, a minority school of the denominational or religious character desired shall be established on application.

3.—Should the establishment of a minority school be inexpedient for special reasons, minority classes shall be formed.

§ 2.

The applications mentioned in paragraphs 1 and 2 of § 1 shall be complied with as expeditiously as possible, and not later than beginning of the school-year following the application, provided the latter has been submitted at least nine months before the beginning of the school-year.

Article 107.

1.—*On the application of a national supported by the persons legally responsible for the education of at least eighteen pupils of an elementary school who are nationals of the State and belong to a linguistic minority, minority language classes shall be established as soon as possible for these pupils.*

2.—*In the same circumstances, if at least 13 of these pupils belong to the same denomination or religion, minority religious courses for these pupils shall be established on application.*

Article 108.

§ 1.

1.—Minority educational institutions may not be closed unless the number of their pupils for three consecutive school years is less than the number required for their establishment.

2.—Nevertheless, the school may be closed at the end of one school-year if throughout that year the number of pupils has been lower than half the number required.

§ 2.

If a minority educational institution is closed, the minority may maintain the institution in question on a private footing. When circumstances permit, the premises and school material employed may be left at its disposal.

Article 109.

§ 1.

The maintenance of minority educational institutions shall be provided for according to the same principle as the maintenance of other State elementary schools. The competent State authority shall be responsible for seeing that their maintenance is provided for.

§ 2.

1.—The communes (or *Gutsbezirke—obszary dworskie*, as the case may be), with State aid, shall be responsible for the maintenance of the State elementary schools. It is possible that several communes may be grouped in *Gesamtschulverbände—zbiorowe związki szkolne*, for the maintenance of schools. State aid will consist either in making grants or subsidies or in assuming direct responsibility for part of the maintenance of the schools.

2.—The salaries of the teaching staff of minority educational institutions, together with replacement expenses, shall be paid by the same organisations as those of the staff of the other State elementary schools.

Article 110.

§ 1.

1.—The minority schools shall receive a share, proportionate to the number of their pupils, of the funds allowed from the budgets of the school districts for the ordinary maintenance of elementary schools, apart from general administration expenses and grants-in-aid. As regards special expenses (transformations and extensions of the school organisation, important building operation, etc.), the competent State authority shall see that the minority schools are not placed at a disadvantage in the allocation of the credits provided for this purpose in the budgets of the school districts.

2.—In case of dispute, the State educational authorities shall decide what expenses are to be considered as general administration expenses.

§ 2.

In the distribution of the funds assigned to public elementary education in general by the State or by public organisations other than school districts, minority schools shall be treated on the same footing as the other elementary schools. As regards the sums derived from the funds whose employment is left to the discretion of the administration, minority schools shall in the same circumstances receive the same allocations as the other elementary schools.

Article 111.

1.—A school committee shall be established for each minority school and for minority classes, to share in their administration. More than half

Members of this committee shall be elected by the persons legally responsible for the education of the pupils of the school or classes in question.

2.—If there are several minority schools belonging to the same denomination or religion in a school district, a joint school committee may be established for all these schools.

3.—If, in a school district, all the schools belong to the same minority, it shall not be necessary to establish a school committee. The delegation of the school district (*dozor szkolny, depulacja szkolna—Schulvorsland, Schuldeputation*) shall in this case be invested with the attributions of the school committee.

Article 112.

1.—The school committees shall have an equitable share in both the internal and external administration of the minority schools. They shall, in particular, be responsible for supervising the condition of the premises and the school material.

2.—The school committees may vote when decisions are taken relating to the use of the funds assigned to minority educational institutions.

3.—Before the appointment of teachers in minority schools or classes, the school committee shall have an opportunity of making recommendations with regard to the choice of candidates, without prejudice to the prerogatives of the State educational authorities in the matter of appointments. The delegation of the school district shall have no voice in the discussions. If the educational authority does not act on the school committee's recommendations it shall, as a general rule, communicate the reasons for its attitude to the said committee if the latter so requests.

Article 113.

With a view to ensuring a sufficient supply of teachers for the educational institutions of linguistic minorities, the Contracting Parties agree to take the following measures:—

1. *As a general rule, only teachers belonging to the minority and perfectly acquainted with its language shall be appointed to minority schools.*

   Language courses shall be established for teachers appointed, or about to be appointed to minority schools who are not sufficiently acquainted with the minority language.

2. *A sufficient number of institutions shall be established, in conformity with the legislation of the State concerned, for the general training of future teachers in which the language of instruction shall be the minority language.*

3. *The diplomas required of a teacher for appointment to a public elementary school of one of the Contracting States shall be sufficient to qualify him to act as teacher of the minority in the portion of the plebiscite territory belonging to the other*

State. Nevertheless, the acquisition of that State's nationality may be required.

Article 114.

1.—The German Government shall take the necessary steps to establish in the German portion of the plebiscite territory, during the school-year 1922-23, the minority educational institutions provided for in the present chapter.

2.—The Polish Government shall see that, in Polish Upper Silesia, the teaching given in German to German pupils, in so far as minority educational institutions are provided for in the present chapter, is not interrupted, unless difficulties of educational administration render this impossible.

THIRD SECTION—VOCATIONAL TRAINING AND EXTENSION CLASSES.

Article 115.

The Contracting Parties shall not be obliged to create vocational schools or extension classes for a minority. If, however, private classes exist, at which the members of a minority can receive adequate vocational and supplementary training, attendance at these classes shall free them of any obligation to attend the corresponding State schools.

FOURTH SECTION.—SECONDARY AND HIGHER EDUCATION.

Article 116.

1. Whereas the special position of the plebiscite territory demands that the needs of the minority as regards secondary and higher education should receive particular attention during the period of transition, the Governments of the two Contracting Parties undertake to use all the influence at their disposal with a view to the adoption of the principles of Articles 117 to 130 by the competent bodies.

2. Until such time as these bodies have settled the question, the two Governments undertake to apply the following provisions.

Article 117.

§ 1.

For the purposes of the present chapter, secondary and higher schools shall be taken to mean schools of all kinds of secondary and higher grades within the meaning of the regulations in force in the plebiscite territory on the date of the transfer of sovereignty. Schools of new types subsequently created, out of the same grade, shall also be considered as such.

§ 2.

The needs of the minorities in regard to secondary and higher public education shall be met by means of the following educational institutions:—

(*a*) Secondary and higher schools employing the minority language as the language of instruction—i.e., minority schools

(*b*) Parallel classes employing the minority language as the language of instruction, established in the public schools employing the official language—i.e., minority classes.

(*c*) Minority courses, including :—

(1) Teaching of the minority language (minority language courses) ;

(2) Religious instruction in the minority language (minority religious courses).

Article 118.

§ 1.

1.—In localities in the plebiscite territory in which there is higher State school, a minority State school of the same grade shall be established if an application to that effect is made and is supported by the persons legally responsible for the education of at least 300 pupils.

2.—Minority classes shall be established in the higher State schools if an application to that effect is supported by the persons legally responsible for the education of at least 30 pupils in each of the four lower classes and of at least 20 pupils in each of the higher classes.

3.—Minority language courses shall be established if an application to that effect is supported by the persons legally responsible for the education of at least 25 pupils and minority religious courses if the application is supported by the persons legally responsible for the education of at least 13 pupils.

§ 2.

An application may be supported by the persons legally responsible for the education of pupils of a linguistic minority who are nationals of the country in which the educational institution is situated, who reside in the part of the plebiscite territory belonging to that country, and who are entered or apply to be entered in a higher school.

Article 119.

1.—The minority school may be established in another locality if this is compatible with the needs of the pupils belonging to the minority.

2.—If the minority school is installed in a separate building, it shall have its own headmaster belonging to the minority. If it is situated in the same building as a higher school in which the language of instruction is the official language, its external administration may be entrusted to the headmaster of that school ; but as regards all matters of teaching administration, it shall have its own headmaster belonging to the minority.

Article 120.

Minority educational institutions under the State may be replaced by communal institutions of the same grade.

Article 121.

1.—The competent authorities of the two Contracting Parties shall be bound to use all their influence and authority with the communes in which there are higher communal schools with a view to the establishment by the said communes of the minority educational institutions mentioned in Articles 118 and 119, if the conditions stipulated in these Articles are fulfilled.

2.—The same applies to minority institutions for secondary education. Nevertheless, the application must be supported by the persons legally responsible for the education of at least 200 pupils as regards the establishment of a minority secondary school, and of at least 35 pupils in the case of the formation of a minority class.

Article 122.

1.—Minority educational institution may be closed if for three consecutive school years the number of their pupils is lower by at least 20 per cent. than the number required for their establishment.

2.—If during one year the number of pupils is less than half the number required for its establishment, the educational institution may be closed at the end of the school year.

Article 123.

In public minority schools and classes of the secondary and higher grades, instructions shall only be given as a rule by teachers belonging to the minority and thoroughly acquainted with the minority language.

Article 124.

With a view to the application of the principles of Article 123, each Contracting Party declares its willingness to engage teachers belonging to the teaching staff of the other Contracting Party on the following conditions:—

(*a*) The appointment shall be made for a period extending until the end of the school year 1936-37. Nevertheless, even before the end of this period, the State may terminate a contract as from the end of each school year upon giving six months' notice, and the teacher may terminate the contract at any time upon giving three months' notice.

(*b*) The State must pay teachers a salary at least equal to that which they would receive in their own country.

(*c*) Teachers shall not be obliged to take the oath to the State required of public officials. They may, however, be required to make a written declaration giving the State a pledge that they will faithfully and conscientiously perform their professional duties.

(*d*) The State may transfer teachers from one minority school to another minority school of the same grade, or to minority classes of the same grade. Such transfers may only take place in the plebiscite territory.

(*e*) From the point of view of their own authorities, teachers shall be regarded as on leave. They shall retain their rights to pensions and to relief for their surviving dependents. On relinquishing their employment in the foreign country, they shall be automatically reinstated in their posts in the teaching staff of their own country. Their period of service abroad shall be considered for the purposes of salary and promotion as service performed in their own country.

Article 125.

1.—In places where there are minority schools or classes, the persons legally responsible for the education of the pupils who attend them shall be adequately represented in the school committees (*kuratorien deputationen—kuratorja deputacje*), if any.

2.—The school committees of communal schools shall have an equitable share in both the internal and external administration of these schools; they shall, in particular, be responsible for supervising the conditions of the premises and school material. These school committees may vote when decisions are taken relating to the use of the funds assigned to minority educational institutions.

Article 126.

The school fees charged for attendance at State minority schools shall not be higher than those charged for attendance at corresponding schools using the official language. No additional fees shall be charged for attendance at minority classes or courses.

Article 127.

The official examinations in minority schools and classes shall be held in the minority language.

Article 128.

If the teaching given in private minority schools corresponds to that given in the State secondary or higher schools, these private minority schools shall be recognised as secondary or higher schools, and their certificates, particularly school-leaving certificates, shall have the same value as those granted by the public secondary or higher schools.

Article 129.

If a private minority school replaces a State secondary or higher school existing on the date of the transfer of sovereignty, it shall be entitled to a grant from public funds:

(*a*) Provided that the income of the school does not cover its necessary expenses. Income derived from school fees shall be estimated on the basis of at least the schools of the same kind;

(*b*) And provided that the number of pupils who are nationals of the State amounts to either a total of 150, or an average of 30 per class in the four lower classes or 20 in the other classes.

Article 130.

§ 1.

1.—State grants shall be made on the same principles as the grants made by the State to communal or private schools of the same kind or grade.

2.—In calculating the amount of these grants, account may be taken of the differences between the financial burdens on State and private schools.

§ 2.

1.—Grants may only be made by communes or groups of communes (*kommunalverbande—zwiazki komunalne*) if the commune or group of communes in whose area the private school is situated makes grants to State or private schools of the same grade, or if its expenditure on its schools of the same grade is not covered or is only partly covered by the income of these schools.

2.—One of the bases for calculating these grants shall be the average amount of the grants or expenses disbursed per pupil. Only pupils of the private school who are nationals of the State and who reside in the commune or group of communes in question shall be counted.

§ 3.

If the State, commune or group of communes declares its willingness and is actually prepared to admit a certain number of the pupils of the private school to a State minority school or minority classes in the same locality, the amount of the grant to be made to the private school shall be reduced by a sum proportionate to this number of pupils.

FIFTH SECTION.—GENERAL PROVISIONS.

Article 131.

1.—In order to determine the language of a pupil or child, account shall only be taken of the verbal or written statement of the person legally responsible for the education of the pupil or child. This statement may not be verified or disputed by the school authorities.

2.—Similarly, the school authorities must abstain from exercising any pressure, however slight, with a view to obtaining the withdrawal of request for the establishment of minority schools.

Article 132.

§ 1.

By language of instruction or language considered as a subject of the curriculum is meant correct literary Polish or German as the case may be.

§ 2.

When a minority language is the language of instruction, it shall be used for the teaching of all subjects for the teaching of Polish in the Polish part of the plebiscite territory and for the teaching of German in the German part of that territory, when instruction in these languages forms part of the school curriculum.

§ 3.

Minority courses in the minority language shall be given in that language.

Article 133.

1.—The Contracting Parties undertake not to authorise in any school in their respective parts of the plebiscite territory the use of books or pictorial teaching material liable to offend the national or religious sentiments of a minority.

2.—Similarly, each of the Contracting Parties shall take the necessary measure to ensure that, in the lessons given at school, the national and intellectual qualities of the other Party are not improperly depreciated in the eyes of the pupils.

CHAPTER V.—LANGUAGES.

Article 134.

The Contracting Parties guarantee to the minorities the free use of their language both in their individual or economic relations and in their collective relations. No provision may limit the exercise of this freedom. The same shall apply as regards the free use of minority languages in the Press and in publications of all kinds, and at public or private meetings.

Article 135.

In verbal relations with the civil authorities of the plebiscite territory, all persons shall be entitled to use either the German or the Polish language.

Article 136.

Petitions addressed to the civil authorities of the plebiscite territory may be drawn up in German or in Polish. The reply may be made in either of the languages. If it is made in the official language a translation must be attached if the petition was not drawn up in that language and if the petitioner has so requested.

Article 137.

The official communications of the civil authorities in the plebiscite territory shall be made in the official language. A translation in the minority language shall be attached to these communications in all places in which this procedure was employed on January 1, 1922. The competent authorities shall nevertheless be free to settle this point in a different manner.

Article 138.

1.—Subject to the regulations concerning the use of the official language and in particular the language in which minutes, motions, etc., must be drawn up, nationals belonging to the minorities may speak in their own language in the *Kreislag*, in the *sejmik powialowy*, and in the municipal and communal councils of the plebiscite territory.

2.—The same shall apply to the *sejm* of the Voivodship of Silesia and to the *Provinziallandlag* of Upper Silesia for four years from the date of the transfer of sovereignty.

3.—The provisions of paragraphs 1 and 2 shall be applicable to any representative assemblies which may hereafter replace the assemblies mentioned above.

Article 139.

1.—The provisions of the present section shall not apply to the administrations of the railways and of the posts, telegraphs, etc.

2.—In direct relations with the public, and particularly at railway ticket offices and post offices, the convenience of the population shall, as far as possible, be considered, so far as the minority language is understood by the employees.

Article 140.

1.—In the ordinary courts of the plebiscite territory, any person shall be entitled to use verbally or in writing either the German language or the Polish language instead of the official language. The same shall apply to petitions addressed to the ordinary courts of the plebiscite territory which must be forwarded for decision to a higher court sitting outside this territory so far as the petition can be admitted by the court to which it is addressed. Without prejudice to the special measures contemplated by the Polish Government for the period of transition following upon the entry into force of the treaty, this privilege shall not be enjoyed by advocates or persons who professionally represent third parties before the courts, except in cases when they are acting on their own behalf.

2.—In case of need, that part of the proceedings which does not take place in the official language shall be translated by the President of the Court, by one of its members, or by an interpreter called by the court.

3.—The court shall decide whether it is advisable to insert in the records or as an annex statements or evidence produced in a minority language, or to attach to the records a translation certified by the interpreter. A party may not, however, demand that an annexed record shall be drawn up in the language of a minority.

Article 141.

The Minister of Justice may decree that complaints, petitions or other declarations of a party, drawn up in the minority language and which must be officially notified *ex officio*, shall be accompanied by the number of copies necessary for such notification.

Article 142.

1.—The official notification of complaints, or other documents relating to a case, drawn up in the minority language shall only be valid if it is made in the other State or in the plebiscite territory.

2.—If the notification in the minority language is without effect, and if official notification must be made *ex officio*, a translation of the complaint or document in question must be arranged for by the court and forwarded for the purpose of notification; a copy of the original must be attached; the notification of the translation shall in this case have the same effect as a valid notification of the document translated.

Article 143.

Without prejudice to the provisions of Article 146, applications for entries in the land register or other registers kept by the courts, as well as declarations of consent relating thereto, must, if they are drawn up in the minority language, be accompanied by a translation by a sworn interpreter, whose text shall be taken as authentic in case of divergence.

Article 144.

In the ordinary courts of the plebiscite territory the Polish language may, if the court deem necessary, be employed in the debates in the German part, and the German language in the Polish part, provided that the parties, witnesses and other persons concerned understand it sufficiently. Even in such case, judgment shall be delivered in the official language, and the records shall be drawn up in that language. The provisions of paragraph 3 of Article 140 shall apply.

Article 145.

The above-mentioned provisions shall also be applicable to commercial courts, trade councils, trade union, arbitration tribunals, social insurance administrative tribunals, conciliation and arbitration committees, conciliation offices for rent and lease cases and Versorgungsgerichle. These provisions are also applicable to relation between the public and bailiffs, arbitrators, persons qualified to draft wills in case of urgency, and village courts.

Article 146.

The above provisions in no way invalidate any regulations already issued, or which may hereafter be issued, authorising in a still larger measure the use of the Polish language in the German part, or the use of the German language in the Polish part. In particular, the option granted to notaries under paragraph 2245 of the German Civil Code shall be maintained.

RIGHT OF PETITION AND METHODS OF APPEAL.

Article 147.

The Council of the League of Nations is competent to pronounce on all individual or collective petitions relating to the provisions of the

present Part and directly addressed to it by members of a minority. When the Council forwards these petitions to the Government of the State in whose territory the petitioners are domiciled, this Government shall return them, with or without observations, to the Council for examination.

Article 148.

In order to ensure that petitions emanating from members of a minority and relating to the interpretation or application of the provisions of the present Part should receive uniform and equitable treatment from the administrative authorities in each of the two Parts of the plebiscite territory, each of the two Governments shall establish a Minorities Office in its part of the plebiscite territory.

Article 149.

As regards the application and interpretation of the provisions of the present Part by the administrative authorities who receive orders from higher authorities, members of a minority may submit a petition to the Minorities Office of their State for examination, in conformity with the following provisions. In accordance with the special stipulations contained in the following articles the Minorities Office shall then forward these petitions to the President of the Mixed Commission for his opinion. If the petitioners are not satisfied with the action taken in the matter by the administrative authorities, they may appeal to the Council of the League of Nations.

Article 150.

1.—All petitions must be forwarded to the Minorities Office in triplicate, under the following conditions:—

(*a*) After the complaint has been brought before the administrative authority which ranks as the highest competent instance in the plebiscite territory as regards the matter in question, or

(*b*) if the case is within the competence of the 'autonomous' communal authorities (*kommunale Selbstverwaltungskorper—kommunale ciala samorzadowe*), after the complaint has been laid before the State authority responsible for communal supervision which ranks as the highest competent instance in the plebiscite territory; or

(*c*) in the case of a dispute as to whether the requisite conditions for the establishment or maintenance of a minority school, class or course have not been fulfilled, after the matter has been laid before the State authority competent with regard to schools or

(*d*) in a case in which the first complaint must be addressed to an administrative authority outside the plebiscite territory, or for which the competent authority of the first instance is outside the

said territory, after the complaint has been laid before the proper higher authorities competent in the matter.

2.—A petition addressed to the Minorities Office before the conditions prescribed in paragraph 1 have been fulfilled shall be rejected without examination.

Article 151.

If a member or a minority establishes a *prima facie* case that the matter which concerns him has not been settled within a reasonable time by the administrative authorities, or that the matter is one which requires urgent settlement, he may demand that his petition should be examined even before appealing to the administrative authorities mentioned in paragraph 1 of Article 150.

Article 152.

1.—In all the cases provided for in Articles 150 and 151, if the Minorities Office does not succeed in giving satisfaction to the petitioners, it shall forward the petition with its observations to the President of the Mixed Commission for his opinion.

Each Minorities Office shall represent the authorities of its country in relations with the President of the Mixed Commission.

Article 153.

1.—The President of the Mixed Commission shall be free to make all enquiries he may consider useful and appropriate. He shall give the petitioners and the Minorities Office an opportunity of submitting their observations verbally or in writing.

2.—After examining the case and giving the members of the Mixed Commission an opportunity of expressing their views, the President shall communicate to the Minorities Office his own opinion on the matter in which the case may be settled in conformity with the provisions of the present part, the provisions of paragraph 1 of Article 158 being applicable *mutatis mutandis*.

3.—The opinion may indicate a final, a provisional or a partial solution. The President may also declare that he will only state his opinion at the end of a certain period.

Article 154.

The Minorities Office shall forward the opinion of the President of the Mixed Commission to the competent administrative authorities, and shall, as soon as possible, inform the President of the Mixed Commission of the decision of the authorities, stating whether and in what manner they have taken his opinion into account.

Article 155.

The time limits for proceedings shall be fixed by the President of the Mixed Commission.

Article 156.

The proceedings shall not be public. The President of the Mixed Commission shall decide whether and when his opinion may be communicated to the petitioner by the Minorities Office. He shall also decide whether and when its publication shall be allowed.

Article 157.

The appeal to the Council of the League of Nations provided for in Article 149 shall be addressed to the Minorities Office. The latter shall arrange for its transmission to the Council by the Government.

Article 158.

1.—If, in the cases referred to in Article 588, the judgment or decision depends on the interpretation of the provisions of the present part, the question of interpretation shall be submitted to the President of the Arbitral Tribunal alone in case of "evocation" (removal from the jurisdiction of the courts). "Evocation" may be applied for by the member of a minority concerned or by the opposing party.

2.—The interpretation given by the President of the Arbitral Tribunal shall take into account, *inter alia*, such resolutions of the Council of the League of Nations as may refer to similar cases in Upper Silesia. The question whether any national laws are compatible with the provisions of the present part may not be examined.

(12) The protection of minorities in Turkey.

Even Turkey, which has figured prominently in the text-books of European history as the oppressor of Christian minorities, has embodied precisely the same provisions in the Lausanne Treaty. Indian Muslims will be particularly interested in the example of toleration which Muslim powers like Turkey and Albania have shown. The treaty with Albania is precisely the same. The following extract from the Treaty of Peace between the British Empire, France, Italy, Japan, Greece, Roumania, the Serbo-Croat-Solvene State and Turkey deals with the protection of minorities. It was signed at Lausanne on July 24, 1923, and was brought into force from August 6, 1924.

Treaty with Turkey, signed at Lausanne on July 24, 1923.

PART I.

PROTECTION OF MINORITIES.

Article 37.

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

Article 38.

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

Article 39.

Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

Article 40.

Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

Article 41.

As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representative of the establishments and institutions concerned.

Article 42.

The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by a special Commission composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

Article 43.

Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

Article 44.

Turkey agrees that, in so far as the preceding Articles of the Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations. The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the permanent Court of International Justice. The decision of the permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

Article 45.

The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minorities in her territory.

(15) How have these safeguards worked?

I have dealt at some length with the main provisions of minorities treaties, as I am convinced that the methods adopted by the great European Powers towards those States which have agreed to these treaties are capable of application to this country. For I believe that what my community needs at the present time is not only separate electorates, but also safeguards in those matters—and they are neither small nor unimportant—which touch us vitally, and upon which depends our cultural, political, economic, and religious existence. A question may well be asked, how have these safeguards worked in Europe? Before I detail the measures adopted by the League of Nations for the execution of these clauses I would like to draw your attention to one feature in the Government of the British Empire, which differentiates the measures adopted by the League. The latter, as is well known, possesses only moral sanction. There is no force behind its decrees, and, consequently, potent and effective sanction is lacking. It is true that the organised opinion of the Powers of the world will disapprove—and has disapproved, on numerous occasions—of any threat to the peace of the world, through the violation by any Power, of any of these clauses. Beyond that, however, it cannot, and probably will not, go. It will content itself with protests, and will not back them by force. In India, on the other hand, if our proposals are accepted, the British Parliament will become the guarantor of these clauses. It is well known that the sanction of the British Parliament is the most potent, the most effective, and the most efficacious in the world. No person, or body of persons, in the British Empire can challenge its authority. I may be permitted to give a very brief outline of the procedure which is normally adopted by the

League in dealing with the petitions of minorities against those Powers which have signed the minority clauses. Such petitions are communicated direct to the Secretariat of the League of Nations and the latter must see if the following conditions are satisfied. These are, that petitions must (1) have in view the protection of minorities in consonance with the minority clauses of these treaties; (2) must not be couched in the form of a desire for the rupture of political relations between the minority which petitions and the State of which it forms a part; (3) must not be anonymous or unauthenticated; (4) must observe restraint in language; and (5) must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure. If these conditions are satisfied, then the League Secretariat sends these petitions to the Governments concerned for remarks and observations. The Government must reply within three weeks, and if it wishes to submit observations, has two months, with a possible extension, in which to prepare them. Petition and comments are then circulated to all members of the Council of the League of Nations, and examined by the Committee of Three which is a committee of the Council. The Committee submits its report to the Council. Thereupon any member of the Council may formally raise the question and then the League starts an exhaustive discussion of the matter in dispute. It may refer the matter, after preliminary inquiries, to the Permanent Court of International Justice, at The Hague. The opinion is now gaining ground that all such questions should, after the formal and necessary stages of a preliminary inquiry are over, be automatically referred to the Court for decision. If this practice become general, it will immensely establish the prestige of the League and consolidate its influence.

(14) India should be compared not with England but with Eastern Europe.

I may, at this stage, be permitted to give a brief account of the racial, religious and class conflicts which occur in many States of Eastern Europe. These, I may add, are completely lost sight of by theorists in India, whose knowledge of England, France and Germany, which are unitary and organic States, is so slight, superficial and hazy as to be positively harmful. They look only at the immediate present, and forget the dreadful slaughter and the systematic persecution which religious parties in these countries perpetrated in the sixteenth and seventeenth centuries. It would be no exaggeration to state that France, England, and Germany have all passed through that stage of religious and racial conflict through which Eastern Europe as well as India are now passing.

Take, for instance, the case of the Balkans. It presents a problem of races and languages, and religions, which finds its parallel only in India. In each of the four Balkan States—Jugo-Slavia, Albania, Bulgaria and Greece—there is the cleavage of Muslim and Christian. In Albania, the Muslims predominate; in Greece and Bulgaria, the Greek Orthodox Church is supreme. In the kingdom of Jugo-Slavia, the Serbs are orthodox, the

Croats, Catholics; while in Bosnia, there are a large number of Muslims. There is, again, the question of language in each of these States. In Greece there is, besides, a vigorous Jewish minority, possessing a majority in the important town of Salonika.

I may next take Czechoslovakia. Its population is 13 millions. It contains nearly 3½ million Germans, ¾ milllon Magyars, ½ million Ruthenians, 180,000 Jews, 75,000 Poles, and a large number of Slovaks; besides, of course, the ruling race, the Czechs. The Germans, Magyars, Poles, Slovaks, and Czechs speak different languages, belong to different religions and races, and are animated by different historical, cultural, and racial traditions.

Poland presents the same spectacle. Out of a population of 27 millions, 14 per cent. are Ruthenians; 7·8 per cent. Jews; 3·9 per cent. White Russians; 3·8 Germans; and 0·3 per cent. Lithuanians.

The total population of Lithuania is about 2 millions, of whom 7·6 per cent. are Jews; 3·2 per cent. Poles; 2·5 per cent. Russians, and 2·4 per cent. other nationalities. The population of Austria is 6½ millions. It contains Jewish, Czech and Slovene minorities. In Hungary, out of a population of 7 millions, 550,000 are Germans; 140,000 Slovaks; 23,000 Roumanians; 36,000 Croatians, and 17,000 Serbians. The religion of these minorities as well as their races are distinct. Roumania nearly doubled her territory by the Peace Settlement, by which she acquired Transylvania, Bessarabia, and Bukowina. In Transylvania, out of a total population of 2½ millions, nearly half are non-Roumanian. Here the Magyars are 25 per cent., Saxons 10 per cent., Jews 3 per cent., and other nationalities 2·9 per cent. In the Bukowina there are German colonies, in Bessarabia, Russians and Ruthenians; and in the Dobruja, Bulgars, Russians, Germans and Turks. Besides a hopeless mixture of races, there is a heterogenous collection of religions. The country contains Roman Catholics, Uniats, Lutherans, Calvinists, Unitarians, Jews and Muslims. Italy acquired the southern part of the Tyrol as far as the Brenner Pass. Of this territory the Trentino is predominantly Italian, while German South Tyrol, from Salurn to the present frontier contains about 230,000 Germans. Again, in the provinces of Gorizia-Gradisca, Trieste and Istria, there are half a million Slavs, forming a majority of the population in all except one or two Istrian towns. I am greatly indebted to Miss Mair's excellent work on the *Protection of Minorities* for a large amount of information contained in sections 14 to 19 of this chapter. She is not responsible for the views expressed here.

(15) The Jewish Minority in Poland.

The Jewish minority has been a source of trouble to the Polish government, owing to its strong economic position, religious susceptibilities and racial prejudice. Before the War the Jews were subjected to a species of terrorism for which there are few parallels in Eastern Europe. Anti-Semitism spread like a prairie fire on the Continent. The Minorities Clauses, however, inspired confidence, and bred hopes in the breasts of the Jews. In 1925 the latter arrived at an agreement with

M. Grabski and a compromise concerning the economic, political, cultural, and religious rights of the Jews was arrived at. The latter had found great difficulty in gaining admission to the public services. Under the terms of the compromise they were to be admitted, "in due proportion, to the public services and allowed to hold non-commissioned ranks in the army." The citizen rights of the Jews which had been greatly restricted by old obnoxious laws were to be regulated and the old restrictions removed.

The cultural concessions made in Border Districts were to be extended to Jews; a circular ordering public meetings to be conducted solely in Polish was to be amended, as was the electoral system in force in Eastern Galicia. A bill was to be introduced providing for a Jewish communities law, including an extension of the franchise, the extension of the competence of the Jewish communities, and their union in a federation. State schools were to be set up, with Jewish as the language of instruction, and a considerable number of hours were to be devoted to Jewish studies; public rights were to be given to non-State schools giving instruction in Hebrew or Yiddish, and attendance at religious schools accepted as fulfilling the provisions of the compulsory Education Law. Subsidies were to be given to particularly deserving professional schools. Training courses and a State qualifying examinations were to be instituted for teachers in Jewish schools, while Jewish studies were included in matriculation examination for schools where they are taught. The programme for the Jewish school system was to be decided by the Government in agreement with the club of Jewish Deputies. Restrictions on admission to universities were not to be based on religion or nationality.

Jewish school children were not be made to do written work on the Sabbath or on Festivals. They and Jewish soldiers were to be allowed to atttend Jewish prayers, and Jewish soldiers were to be released from duty on days of Solemn Festivals. Jewish soldiers were to be provided with Kosher food or receive an extra allowance to enable them to buy it. Graduates of the State seminaries for Jewish teachers of religion were to have the same privileges as those enjoyed by Christian priests and theological students, especially in matters of complaints and sanitary services in case of mobilisation.

On July 11, 1925, a series of resolutions embodying a part of this agreement were presented to the Cabinet by its political Committee. They included all the educational proposals and proposals for laws establishing the status of the Jewish communities, for the authorisation of the Jewish language on the same footing as other minority languages and for the special allowance to be paid to Jewish soldiers, and were voted by the Cabinet on July 16, 1925.

(16) Minorities in Latvia.

In Latvia out of a population of 1,503,193 8·86 per cent. are Russians, 4·29 per cent. Jews, 3·23 per cent. Germans, 2·19 per cent. Poles, 0·52 per cent. Lithuanians and 0·25 per cent. Esthonians. The majority

of the population is Protestant, but about 23 per cent. are Roman Catholics, and about 8 per cent. Greek Orthodox.

The general provisions for the treatment of minorities were explained by the Latvian Government in a series of reports submitted to the League in 1922.

The constitution of November, 1918, established universal direct suffrage with voting by ballot, and proportional representation for minorities.

An amnesty was proclaimed and all refugees were given the right to return. The right of association was assured to all citizens by Kerensky. Russian and German are allowed in the law courts, and in the case of persons who know neither language, sworn translators are employed. Elementary education is compulsory and is given in the mother tongue of the child. The Ministry of Education has special sections of German, Russian, Jewish, Polish, and White Russian schools, and in districts where there is a minority school the minority is represented on the local education committee. *Twenty per cent. of the members of local councils belong to minorities and 20 per cent. of State employees.* According to reports made by the Joint Foreign Committee, Jews do not share in the general equality. It is asserted that the number of Jews employed by the State is unduly small in proportion to their numbers—5 per cent. of the population. The Latvian report to the League classes Germans and Jews together as making 9 per cent. of the State employees, so that it is defficult to establish or controvert this point.

(17) Minorities in Esthonia.

The Esthonian Republic has also shown great solicitude for the rights of minorities, though the latter form only 10 per cent. of the population. Its population is only a million, and of it 3·46 per cent. are Germans, 5·13 per cent. Russians, 0·9 per cent. Swedes, 0·4 per cent. Jews, besides Tartars. Its policy towards the language of the minorities is liberal. In districts where the minority predominates the minority language may be officially used by the local authorities, and communications to the central authority may be made in German, Russian or Swedish. All Esthonian citizens have the right of association. The suffrage is universal. There is no State religion. Elementary education is free and compulsory, and minorities are assured of education in their mother-tongue at state expense. A special department of the Ministry of Education deals with minority schools. Minorities have the right to establish independent organisations for the maintenance of their national culture, and to carry on their private relief work in so far as it is not in conflict with the interest of the State. Esthonian nationality is open to all persons domiciled in Esthonia, who were formerly Russian subjects, and were either born in the country, or are entered in the Russian register of inhabitants. Most significant of all is a provision in the Esthonian Code of Criminal Law, Article 45A, *which makes it a penal offence to use pressure on any person to induce him to forego his minority rights.*

(18) Minorities in Czechoslovakia.

This country contains a large number of vigorous, enterprising, and influential minorities, such as the Germans, Magyars, Jews, Poles, and Ruthenians. The Ruthenian minority complained to the League of Nations in 1921 that Ruthenia had not received the local autonomy assured to it by the Minority Treaty. It also pointed out that their country was entirely administered by the Czechs. The Czechoslovakian Government gave a very satisfactory reply to this complaint. They said that their policy was to develop education in Ruthenia as rapidly as possible, and in the meantime to replace the former Hungarian administrative organisation by an administration of Czech officials. This was explicitly stated to be a provisional measure, and the Czech officials were being progressively replaced by inhabitants of Ruthenia. By 1922 more than half the State officials were natives of Ruthenia, though of course these were not all Ruthenians. As a matter of fact, the Czechoslovakian Government passed a language law which was even more liberal than the provision made in the Minorities Treaty. Another minority in this country, which has sent several petitions to the League of Nations, and based its claim upon the minorities clauses, is the German race. The Germans were the rulers; they are now the ruled. It is, therefore, only natural that they should feel the effects of some of the measures proposed by the new government keenly. Such measures in a newly-created State deal generally with the question of distribution of land between the dominant race and its subjects. Czechoslovakia, as well as Roumania and Poland, passed a series of Agrarian Laws which gave rise to a number of complaints from those land owners who had engrossed the bulk of the land before the War. The German landowners also complained to the League of Nations in 1922 of the numerous acts of injustice to which they were subjected. They asserted that the language law of February 29, 1920, under which official business may be transacted in the minority language only in districts where 20 per cent. of the population belong to the minority, was contrary to the treaty, and Germans were forced to use the Czech language on the telephone, in shop signs, advertisements and the like. The buildings and archives of the university of Prague held jointly since 1884 by Czechs and Germans had been transferred to the Czechs, and schools were being reorganised in a manner which was unfair to the minority. Lastly, all landed property exceeding 150 hectares of arable land had been placed under State administration, with the intention of transferring it from the hands of Germans into those of Czechs. Disputes went on these and other questions between the two parties for months. There has, however, been a great progress towards co-operation and the policy of the President Masaryk and Dr. Benes has been crowned with complete success. Their aim has consistently been not merely fair treatment of minorities, but a real union of all sections of the population in which the distinction of majority and minority would not be felt. Most of President Masaryk's public utterances contain references to this policy, of the importance of which he has been convinced from the outset. The following statements are typical of his attitude, " our State will, of course, have its national character; this

flows directly from the democratic principles of the majority. But since we have other nationalities among us, it must be our constant endeavour that all our citizens shall have full enjoyment of their rights and satisfaction of their legitimate claims. That the hope for the fair treatment of minorities is not unfounded will be clear from the fact that the representatives of the minorities have been admitted to the Cabinet.

(19) Italy and her Treatment of Minorities.

The case of Italy shows conclusively the results that flow from the absence of safeguards for minorities. Though Italy has acquired territories which contain powerful minorities, possessing a high type of culture and animated by traditions of a glorious past, she refused to sign the Minorities Clauses of the Treaty. The effect of this policy was visible in her dealings with the minorities. Indeed, nothing shows more effectively, nothing could serve a better example of the necessity for safeguards, than the policy pursued by the Italian Government. If the clauses had been inserted in her Treaty, and if the League of Nations had been made a guarantor thereof, she would have been answerable to a third party, the League. At the Peace Conference the Italian Government announced that it intended to carry out a wide and liberal policy towards its new German subjects, in respect of language, culture, and economic interests. The Prime Ministers of Italy, Giolitti and Bonomi, had affirmed their intention of respecting local institutions and local customs. But the policy of Signor Mussolini, as unfolded in an interview which he gave in 1926 to a Paris newspaper, is clear and definite. " When I visited South Tyrol, I noticed everything German, church, school, public functionaries, railway and post offices. Now in all the schools of this province, the teaching of Italian language is compulsory, all post and railway officials are Italians, and we are just now about to settle there a large number of Italian families. In this way we shall succeed in Italianising the country, just as we have Italianised the 'Sette Commune' nearby" Beside this may be set a statement of Signor Fedele, Minister of Public Instruction, in the Senate on June 6, 1927: "Our activity, the object of which is to establish the *italianità*—never quite oblitrated—of the frontier regions, has developed continuously and most satisfactorily. *There is not one educational institution left for German, or instruction in German.*" The policy of Italianisation in the Tyrol began with a vengeance. In December, 1922, a decree of the Prefect had ordered the removal from all schools of pictures of national heroes of Tyrol. In 1923 a number of German schools were closed, and all German children were obliged to attend Italian schools, where teaching in German was forbidden. In July, 1923, Signor Tolomei enunciated a programme of Italianisation of all minorities in Italy, which was immediately given effect to The census was revised in favour of the Italian population. Italian was made the official language in the newly-acquired territories, and the use of any other language in the law courts, in advertisement, and public notices, and in official correspondence, was declared illegal. German place-names, names of roads,' and even family-names, were Italianised. The use of the name "South Tyrol" was prohibited, and the German *Der Tyroler* was suppressed. German banks were

dissolved, and an Italian Land Credit Bank founded in their place: Chambers of Commerce and Agricultural Associations were dissolved, or placed under strict supervision. The German Alpine Union, Catholic Students' Union, Choral Societies, and even Volunteer Fire Brigades were dissolved. The gradual suppression of the schools of minorities was then started in October, 1923. At first German, Croats and Slovenes were allowed as supplementary languages, but in December, 1925, they were completely suppressed. Again, the administration of law in these territories is most oppressive, and thoroughly unjust. All laws and regulations are published in Italian only. There is consequently an inextricable confusion between Italian laws which have never been properly promulgated, and the old Austrian laws which have not been formally repealed. The decree making Italian compulsory in courts completely deprives the minorities of all rights at law. The decree forbids the use of any language other than Italian, in all civil and criminal procedure, written and oral. Persons who cannot understand Italian cannot be empanelled. All documents, evidence, etc., in other languages than Italian are null and void. Again, it is expressly stated that if a defendant does not know Italian, his counsel may not put a question to him in his own language, but must use the judge as an interpreter. Since only Italian-speaking persons may be empanelled, any member of the minority must expect to be tried by a unanimously hostile court. The Slav minority is specially hard hit by the language restrictions. The great majority of Croats and Slovenes do not know Italian at all; and the Italian teachers, officials and even priests supplied to them by the government cannot speak their language, if they were allowed to. Again, local self-governing institutions, which enjoyed a measure of autonomy under the Austrian Empire, are placed under the authority of State officials. This is a very brief account of the measures which the freedom-loving Italians have adopted towards minorities who ruled them for centuries, and whose culture is in no way inferior to theirs. Yet the League of Nations can do nothing in this matter. Italy did not sign the minorities clauses, and she cannot be asked *now* to place her minorities under the protection of the League. If anybody raises this question at a meeting of the League, Italy will promptly reply that it is her domestic concern, and foreign Powers have no right to interfere. Indeed, the policy pursued by Italy provides a remarkable illustration of the absolute necessity of minority clauses for the protection of minorities.

(20) The British Prime Minister on Minorities Treaties.

I will draw your attention to a statement of the Rt. Hon'ble J. Ramsay MacDonald, the British Prime Minister, in the *Sunday Times*. The Indian minorities are in complete agreement with the views he propounds. It is a remarkably clear analysis of the situation, while the methods suggested therein will, I am convinced, be effective. The difficulties experienced by minorities in Eastern Europe are much less acute than those which are met with in India. His statement regarding the success of minorities clauses in Czechoslovakia is borne out by many who have studied this problem in that country. It is instructive to contrast the position of minorities in Czechoslovakia with that accorded to them in Italy.

Mr. Ramsay MacDonald's statement is as follows :—

The complete breakdown of democratic Government in Yugo-Slavia, and the establishment of a dictatorship there, is the latest warning which Europe received that, unless its minority problems are solved in a spirit of mutual respect and of give-and-take, there will be grave trouble.

" When the peace treaties were being drafted in Paris those who knew the history of Europe and understood the unsettlement that was latent in nationalism shook their heads over the recklessness of the victors in their treatment of minorities. When the treaties were ratified, leaving Jews out of account, the following figure will give some idea of how they left the matter. Out of a population of 27,000,000 Poland included about 6,000,000 of alien race ; Czechoslovakia, out of 13,000,000, had 3,250,000 Germans and 745.000 Magyars; Hungary, out of 7,000,000, had over 500,000 Germans and nearly a quarter of-a-million others; Roumania was still worse, for half of Transylvania was alien, Bukovina was German, Bessarabia was Russian and Ruthenian, the Dobruja was a mixture of Bulgars, Russians, Germans, and Turks.

"Since then Greece and Bulgaria have recognized Macedonian minorities, and Yugo-Slavia has protested that there are no Macedonians. No attempt was made to settle the Balkan States in accordance with race, President Wilson explaining that the principle of self-determination was to be applied only to defeated States. Thus Macedonia has been left to splutter and boil and protest, and the conflict between other nationalities, which Dr. Benes reveals in his interesting *War Memoirs*, has been allowed to continue. Nor must cases like Alsace and the Saar be left out of account in a survey of the minority problem.

A Double-edged Weapon.

" However great is the emphasis which one puts upon nationality as an element in democratic government and in peace, it is a double-edged weapon. The League of Nations has found it an awkward passion to pacify by justice, and the democrat who finds that the whole of his favoured system of government depends upon a willingness to co-operate in keeping political machinery going and in reforming it whilst it is going, also finds an uncompromising nationalism an irritating and dangerous obstruction. No political genius can provide frontiers for European States which will follow with fidelity racial divisions.

" The populations are too much mixed up, and there are islands of races which can neither be formed into separate States nor be connected politically with their parent stock. In the common interests of peace, and as a defence of democratic institutions, we have therefore to consider what are the rights of minorities, and what state of policy should be pursued regarding them. Obviously the aims should be to make the minorities comfortable in the State of which they are a part, so that they may co-operate in its general life.

Composite States.

"Some of the 'Succession States' are frankly composite in race, like Czechoslovakia and Yugo-Slavia. The problem here is different because it is no question of readjustment of boundaries but of liberty, justice, and co-operative government.

"With them we must not be too impatient. These people have bitter and hot memories which must have time to become normal.

"The feelings of some of the races just freed from Magyar and German and Austrian domination cannot be expected to be serenely Christian. If people who recently were dominant in Austria were cavalierly treated by Czechoslovakia to begin with, that must not be taken too seriously if it is clearly only a first phase. In these States, moreover, racial differences are intensified and complicated by religious differences.

"The rules to be applied in them are really simple so soon as their political problem is objectively regarded. There should be no distinctions in the enjoyment of the rights of citizens; language and religious differences should be respected in law, administration, and education; where races can be formed into provinces, self-administration should be granted. Men who have been wearied by the apparently endless creation of frictions have often told me that when liberal policies have been begun the equalities given under them have only been abused. What cure is there for this but patience in well-doing? What makes abuses increasingly harder, and the democratic method of doing the right thing and then actively meeting by propaganda the mischief-makers is the best way for protecting the State against internal disruption.

Czechoslovakia's Condition.

"That method is being pursued in Czechoslovakia, and, though I still get memoranda of grievances from minorities in that country, each succeeding visit I make there convinces me of the growing solidarity of the State. How different it is in Yugo-Slavia, where the policy of 'the Serbisation of the Croats' has created a situation in which neither the one race nor the other will co-operate, and where the State seems to have been faced with the alternatives, both equally evil, of an endless Parliamentary deadlock, or a dictatorship which no observer believes is to be a short one.

"Italy is pursuing the same policy as the Serbs, and can do it for the time being—but only for the time being—without disturbing Europe. The Peace Treaties give a large German and Slav population to Italy which, by every repressive power it can command, it is trying to Italianise.

Access to the League.

"In view of the conditions under which these territories were attached to their respective States and of the fact that it was done as the result of a war for which we all had to pay and suffer, such minorities as these ought,

as a last resort, to have access to the League of Nations as a body of conciliation. It is a great misfortune that the powers given to the League to observe the obligations of States to minorities did not apply to old States like Italy, and that, such as they were, they have been weakened in practice. That should be ended at once, and an effective League supervision should be restored.

"The technical difficulties of presenting petitions should be removed, and the defence of the accused responsible States should be made public. A permanent Minorities Commission ought to be established similar to the Mandate Commission, and the diplomacy of hush should be banished from its work. Dr. Stresemann, after his provoked outburst at Lugano in December, gave notice that he would raise the whole question of the protection of minorities at the next meeting of the League. Everyone who cares for the continuance of democracy and the establishment of peace in Europe will wish him well."

(21) President Masaryk and Minorities.

I may be permitted to quote the following from Dr. T. G. Masaryk, the first President of the Czechoslovak Republic. His policy towards minorities in Czechoslovakia has been crowned with complete success :—

"Politically, the Germans are the most important of our minorities, and their acceptance of our Republic will simplify all the other minority questions. Alongside of the Germans we have a few Poles, more Little Russians, and still more Magyars. To them also the rule applies, that the rights of race must be respected. Local Self-Government and proportional representation may, in a democratic State, serve the purpose well. Each minority, too, must have elementary and secondary schools of its own.

"For us, who live in a country racially mixed and so curiously situated in the centre of Europe, the language question is of great moment, politically and educationally.

"Before the War, I took part in the controversy whether the authorities should be unilingual or bilingual. *In present circumstances I think it more practical that they should be multi-lingual, though, during the transition period, it may be better, in some bilingual offices, that officials should work in one language only.*

"In practice, the question is one of knowing the languages spoken in the country. It is in the interest of racial minorities to learn the State language, but it is also in the interest of the majority to be able to speak the languages of minorities, especially that of the biggest majority. The teaching of languages in schools will be arranged on this basis.

"*In a democracy it is obviously the right of every party to share in the administration of the State, as soon as it recognises the policy of the State and the State itself. Nay, it is its duty to do so.*"—(*Making of a State, pages* 386 *and* 387).

(22) Indian Muslims and Rights of Minorities.

I have discussed this subject at length, because I feel that the position of Indian Muslims is liable to be misunderstood. We are not, and have never been, reactionary. We do not wish to create an *imperium in imperio*. We are as desirous of the constitutional progress of our motherland as any other community. We will, however, strongly oppose any scheme in which our rights are not safeguarded. We do not claim anything that is inimical to the welfare of our country, or inconsistent with her national aspirations. We are proud of the noble heritage of culture which India boasts, a heritage which has rendered inestimable services to humanity. All that we claim is that our rights should be safeguarded in any re-arrangement of the Indian Constitution. We have a perfect right to point to the rights guaranteed to minorities in Eastern Europe, as well as to the rights exercised by us at the present time, under the existing law, and to ask for a guarantee that these rights shall be secured to us in a parliamentary statute. I am very glad that our Committee has unanimously agreed to these rights, and I hope and believe that the Parliament will ratify this agreement, for, after all, they concern the two communities alone.

CHAPTER IV.

United Provinces Muslims and Public Services.

(1) What part does administration play in India?

In no country in the world are the "Services" as important an agency of public good as they are in India. Nowhere are the public servants, under the Government as well as local bodies, so almost exclusively looked up to for guidance, for control, and for active help as in India. In the modern political organization, India still affords unique opportunities to the public servants of contributing to the growth, the prosperity, the peace and the happiness of the masses as much as of the classes. No other agency is here in such intimate living contact with the masses, and has such an overwhelming share in the shaping and control of their destiny. For good or for evil, the Services have, ever since the uprooting of indigenous self-governing institutions two or three centuries ago, directed and controlled the nation's destiny, and executed its policies almost exclusively. And for another quarter of a century at least will this continue to be so, while India laboriously and with many a lapse and travail accustoms herself to those new and modern methods of Swaraj which are being fast evolved or imported.

The struggle and the bitterness about representation of the different communities in the Services has thus a very much deeper meaning and a nobler significance than merely that of loaves and fishes. As Mr. A. Rahim points out, whatever the ostensible "constitution" or policy established, a very great deal does, and for decades to come must, depend on how and who directs and operates it in actual working. The number of public officials may constitute only a microscopic minority of the total population, yet it is because they are virtual directors of the nation's destiny that Britons and Indians—Hindus and Muslims—are competing so eagerly for their due share in them. We are free to acknowledge that the Reforms have by bringing India face to face with the problems of self-government precipitated the struggle for power and emoluments of office and, in fact, for control of the entire machinery of the Government. As the process of withdrawing is steadily in operation, as more and more people new to power come into sway, the more will the experience and training, the technical skill and administrative efficiency of officers be effectively used and valued. As we approximate more to Swaraj and real self-government, the more will the influence of these guides, philosophers and friends of the public bodies and leaders increase in the first instance; and the more will there be action and reaction of opinion and actions, public and official.

It is by way of recognition of these factors in present and recent politics that the Lee Commission has emphasised the need for Indianisation of the Services, and as a present ideal fixed the percentage of Indians in the Superior Services, at 50 per cent. in the I.C.S., 50 per cent. in Police, 75 per cent. in Forest, 60 per cent. in Irrigation, 50 per cent. in Customs, 75 per cent. in the Telegraph and Railways. In actual working out, however, and because of not fixing higher ratios of immediate recruitments, these percentages are nowhere established.

The Government of India had to admit in 1924 that the percentage of Indians in all Superior Services under it was only 2·9 per cent. for Muslims and 20 per cent. for Hindus. The Lee Commission, however, grievously failed to carry the policy of fixation of ratios to its logical conclusion, and omitted to fix similar definite ratios also between the Hindus and Muslims and other minority communities sufficiently important in any province. That this fixation is even more important and necessary is proved undeniably by unfortunate incidents and positions in the different Services. In some cases, officers utilise their position to carry on communal propaganda or sow the seeds of internecine warfare by sectional favouritism and injustice. A Governor of Bombay left the shores of India with the parting wail that even his responsible popular Minister could not resist the lure of power and patronage to surround himself with a permanent staff recruited almost exclusively from his own community. Even in the hallowed preserve of Law and Order, this virus seems to have invaded it, in spite of the fact that it is the one department of which the Government is justly proud, and for which India pays so heavily, the Bihar and Orissa Police Administration Report admits: "In 2 or 3 cases Police Officers permitted religious fervour to obscure their judgment and prejudice their conduct."

(2) What will be the position of Muslims when provincial autonomy is given without representation in the Services.

If such is the position while a centralised bureaucracy still reigns supreme, how much more will it be so under Indianised and self-governing conditions, when the present checks are removed and "the powerful central idea of Government by majority" comes into full operation. Unless a fixed, frank and uncompromising ratio is mutually settled between at least the two communities who aspire to Indian Swaraj, and its principles accepted and legalised in parliamentary statute, not only will constant bickerings soil our records of self-government, but the greatest of all human tyrannies will reign supreme in India: the tyranny of an unmitigated oligarchy of caste or creed over free and democratic Islam. Policies, however generous, humane or progressive, will be carried out exclusively for the benefit, and to perpetuate the monopoly of majority communities, and there is a serious danger of the claims of minority communities, whether Hindus or Muslims, being ignored. Even in the matter of educational, industrial, and commercial developments, the influence of officers and of Government action is unique in India, as evidenced by present legitimate advantages and privileges enjoyed by contractors as opposed to other foreigners and even sometimes to Indians. If this is so of a constitutional foreign power, then to how much greater lengths could Indian majority community officers carry their exploitation of minor communities officers can be more easily imagined than described. Even under the moderating influence of irresponsible and irreplacable bureaucrats, certain castes have secured preponderance in many grades of services.

It is sometimes said that the question "of loaves and fishes of office" is a sign of India's "slave mentality." But Muslims know what there is behind all this palpably fallacious argument as well as behind

accusations of "slave mentality, selfishness, petty-minded obsession with bread and butter," etc. They insist on taking their due share in "serving" the Motherland. They are willing to and have died fighting even against Muslim foreign powers, as their record during the last great war shows conclusively. There is no community in India which sent a greater proportion of its members to the battlefield. That the Services will give them ample opportunities of serving their own community and the Indian nation is not difficult to comprehend. That here in the United Provinces such service of their community is called for is apparent alike from their own depression and the assertiveness of the majority community.

(3) What has been attempted in the past?

The Governor of Bengal in Council, in 1925, publicly announced, "that Government must give due consideration to encouragement of education in the Muhammadan community by provision of Government employment for them to a reasonable extent . . . Apart from the official duties, administrative officers of the Government are, through their position, able to exercise a beneficient influence over the lives and general fortunes of the people; and the Governor in Council has met with numerous instances in which Muhammadan officers have advanced the interests of their community. Without a larger proportion of Muhammadan officers than now employed the interests of the population as a whole are not likely to be secured. Putting aside the natural reliance of the several communities on officers of their own community in times of tension, the Governor in Council considers it inevitable that Muhammadan officers will be in closer touch and sympathy with the needs and aspirations of their community than any other officers."

This was two years after the united efforts of Messrs. C. R. Das, Sutesh Bose, Moulvi Abdul Karim and others to "secure the rights of each community as the foundations of self-government."

Mr. C. R. Das' Bengal Pact "established the real foundation of Swaraj as far as Government posts" were concerned as follows:—"55 per cent. of Government posts should go to the Muhammadans to be worked out in the following manner:—

"*Fixing the tests for different classes of appointments.*—The Muhammadans satisfying the least test should be preferred till the above percentage is attained; and after that, according to their due proportion, subject to this, that for the intervening years, a small percentage of posts, say 20 per cent., should go to the Hindus."

Unless the principle of representation of our community in the public services is embodied in an Act of Parliament, we will never be able to secure our due share in the administration, as some Indian Secretaries, Heads of Departments and Superior Officers aided by majorities in the Boards and Legislatures, may frustrate the attempt to establish this equitable ratio, by means which are too well known to enumerate, and which have so far naturally resulted in uniform preferences given

to relations, co-religionists, caste brethren, and sub-caste relations. Such officers should be put out of the reach of the perfectly natural, if by no means excusable, tendency to prefer their own people whom they know well, to recruits of Muslim, Christian or aboriginal and other minority communities whom they do not know. The proportion of communities in the Lower Services is inevitably controlled by the ratio among the Heads of Departments and the higher controlling officials and their lower Secretariats.

(4) Government of India on the question.

Sir Malcolm Hailey, as Home Member, laid it down in 1923 by public declaration that the definite policy of the Government of India was to prevent the preponderance of any community, caste or creed in the Services under its control. The Local Governments followed up this salutary lead, and the Bengal Government in 1925, laid down by order of Governor in Council, " that in 45 per cent. vacancies filled by direct recruitment, Government reserves the right to appoint Muhammadans alone, provided they possessed the minimum qualifications or secured only the qualifying marks in competitive tests." In the Bengal Secretariat staff 33 per cent. of all vacancies are reserved for Muhammadans " and the very minimum proportion is to be immediately established." The Bombay Government has made it obligatory in all recruitment to give " a fair proportion to Muslims in the Presidency proper and 50 per cent. in Sind." The Madras Government has " accepted the policy of giving preference to candidates from communities which have not got a due share of appointments in the Public Service, and accepted the proposal of the Muhammadan Staff Selection Board that in proposing lists of candidates suitable for clerical as well as other appointments in public service the following percentages should be adopted as a general rule :—" Non-Brahmans 40 per cent. *Muslims* 20 per cent. Brahmans 20 per cent. Indian Christians and Anglo-Indians 10 per cent. Depressed classes and others 10 per cent. The United Provinces Government notified on May 29, 1923, that of the six vacancies to be filled in the Provincial Executive Service 2 shall go to the Muslim." Similar acceptance of Sir Malcolm Hailey's policy has been made by all Local Governments. Their policy is explained on pages cxxiv—cxxvi of this Note.

(5) Policy of definite fixation of ratio.

The policy of definite fixation of ratios of various communities in the public services by the Government is fairly old and authentic. The agitation was started by an educational officer himself, and a proportion was fixed in Bengal, and in 1893 the Government laid down that " provided qualified candidates are available, necessary orders should be issued to the Education Department and all District and Municipal Boards to appoint *only* Muhammadan candidates till the proportion (of about 52 per cent.) is reached. Circle Inspectors were to follow a similar principle in appointments of teachers in Government High Schools. It

must be most disheartening to the Muhammadan people to find their brethren almost wholly excluded from appointments, and this must react most injuriously on their educational advancement."

In 1901, however, the Secretary to the Government remarked severely on the whittling down of this order in actual working, and a fresh order was issued to the Heads of the Departments, saying, " Notwithstanding the distinct orders of Government on the subject, only 26 out of 582 teachers in Government service were Muhammadans. Inspectors of Schools are to adhere to the degrees laid down as qualifications for the vacant posts, and not to give preference to a Hindu possessing a higher degree which is not an essential qualification for the vacancy."

At long last something like a fair proportion of Muslims has been reached in this one department in Bengal. And it is a significant commentary on the false and mischievous alarms raised about " efficiency suffering and Muslims being incompetent," that in this of all departments there has been no complaint from Government or grievance of inefficiency from the public, nor have Muslim officers failed to reach the very highest posts in which academic learning and high literary as well as inspecting and touring abilities are essentially called for. ' The efficiency theory ' has been exploded in the case of the European Services (where it certainly had some semblance of valid justification, ever since the organised agitation against the Ilbert Bill in the time of Lord Ripon), and it ill behoves a professed " nationalist" community to revive it. My community can dignifiedly ignore this insulting challenge after having founded empires and given to Europe its " chivalry " (the very word is Saracenic), its Cordova and Granada, its mathematics, science and philosophy, its paper, mariner's compass and Algebra, as well as its religious toleration, democratic constitution and its initial Renaissance from the Dark and Middle Age barbarities. The problem of Muslim middle class unemployment is growing as acute as any other, and effectively refutes the statement of interested persons that qualified candidates are not available. Now the paltry " 5 per cent. Muslim officers ratio in the whole of India" which was complained about in 1924 by Mr. Abdul Karim in the Council of State is inevitable.

I may be allowed to quote the following from Mr. E. C. Bayley : " Is it any subject for wonder that they (Muslims) held aloof from a system (of education) which, however good in itself, made no concession to their prejudices, made in fact no provision for what they esteemed their necessities, and which was in its nature antagonistic to their interests and at variance with their social traditions ?" Sir W. Hunter, even more tersely observed, from his first-hand knowledge as the official chronicler, that " the astute Hindu has covered the country with schools adapted to the wants of his own community, but wholly unsuited to the Muhammadans. The language of our Government schools is Hindi, and the masters are Hindus." The Madras Government in an official resolution declared : " The existing scheme of instruction was formed with too extensive (and intensive) a reference to the requirements of the Hindu students ; and the Muhammadans were placed at so great a disadvantage

that the wonder was not that the Muhammadan element in the schools was so small, but that it existed at all." After this comment it is useless to prove what should be the basic principle if Government want, as the Governor in Council declared in Calcutta, " to encourage Muslim education and prevent the monopoly (in the Services) of any class."

I repeat that the question of Services is essentially a national and fundamental one. It cannot be contemptuously, and with dexterity, waived aside as a problem of India's slave mentality ; when in the near future it will be the Indianised officials and autonomous Cabinets and Boards from which such " boons " will be craved, presumably with equal alacrity and subtlety by our brethren.

(6) Modern India : result of efficient administration.

It is my firm conviction that to Muslims, and I may add, to a large number of persons belonging to the various communities, religions, castes and races of India, the question of administration is a question of political and economic existence. I hope that this statement will not be exposed to the charge of exaggeration, when I explain to you the peculiar, nay the essential features of public administration in India. The great, powerful and influential official hierarchy which our national King, Akbar the Great, built up and which subsequent administrators have perfected, has played a leading part in the development of this country. It has built canals, established law and order in the country, provided an excellent system of roads, and established and methodised the collection and assessment of land revenue. I may go further and state that modern India is the work of a devoted band of officials, both English and Indian, who by their vigour, energy, enterprise, and devotion, have made, and are still making, the great, and, let us add, the only safe course that leads to responsible government and dominion status. I do not deny, indeed, I should be the last to deny the part which various local bodies have played in this process. I have never denied the utility, nay the absolute necessity, of local self-governing institutions. They contribute to the development of local centres of thought and action. Nor do I deny that they form the habit, among the inhabitants of a town or district, of bringing their knowledge and capacities into common stock for the benefit of the whole community, making those friendly personal relations which benefit neighbours, and develop a capacity for give-and-take. The heaping together in such an assembly of various elements of power, the conjunction of forces of rank, wealth, knowledge and intellect, naturally make such institutions a sort of foundry in which public opinion is melted and cast, where it receives that definite shape in which it can be easily and swiftly propagated through the whole province, deriving not only an authority from the position of those who form it, but also a momentum from the weight of numbers in the community whence it comes.

I have thought it necessary to state this, in order that the position of my community might not be misunderstood. All that I claim is that the official in India exercises an influence which is hardly inferior to the

influence of local self-governing institutions. This does not mean that he acts as a rival to the latter, nor does it imply that the local bodies are in any way unfitted for the task with which they are charged. My contention is that the ideal of all governments in India—and in this I include the Mughal as well as the British Government—has always been to bring the active, planning will of each part of the government into accord with the prevailing popular thoughts and needs, and thus make it an impartial instrument of symmetrical national development, and to give to the operation of the government thus shaped under the influence of opinion and adjusted to the general interest, both stability and incorruptible efficacy. I do not, of course, claim that this ideal has always been realized in practice; nor do I deny that in some cases acts have been committed by the government and methods adopted which are unworthy of any civilised government. It must, however, be admitted that the best type of officials in India—and in this category, I include both the English and the Indian officials—have always placed this ideal before them, and tried to carry them out. I may go further, and state that the official in India is the balance-wheel of the constitution.

It is no doubt true that the Legislature will give a specific mould to the Government, and the party in power can, if it has the will and the opportunity, mould the administration. But administration in India is not merely a question of loaves and fishes. It is a question of power, of opportunity and of service. A Tahsildar or a Deputy Collector wields an influence which is wholly disproportionate to the amount of pay he draws.

(7) Position of United Provinces Muslims in Government Services at the present day.

I have deemed it necessary to restate the main principles upon which Indian administration is based. The part played by the Muslims in the executive services of these provinces is known to all who have had experience of their work. The great majority of officers who helped the British in the maintenance of law and order, the evolution of various institutions, the revenue system, the police, the judiciary, etc, were Muslims.

Impartial, disinterested and experienced officials have testified that Muslims possess executive ability of a high order; they have acknowledged their driving power, enterprise, dash and power of command. The Muslim Deputy Collectors and the Muslim police officials contain some of the smartest and most successful administrators in India.

I would like to refer you to another point, which is of special importance to us at the present. The present political atmosphere of the country is surcharged with racial and communal rivalry, almost in every branch of life.

(8) Riots in the United Provinces, and their significance.

According to the information supplied by the United Provinces Government to the Local Legislative Council on December 21, 1927, between

March 31, 1921 and December 21, 1927, restrictions were imposed on 700 religious processions in 40 out of 46 districts of the United Provinces; 90 communal riots occurred in various parts of the United Provinces; during these riots 39 Hindus and 42 Muslims lost their lives, while 1,566 Hindus and 735 Muslims were wounded. This is a record of which every Indian ought to be ashamed. Yet, this is an index to the feelings of the two communities in one province alone. It is satisfactory to note that the leaders of the two communities are engaged at the present time in devising remedies for this disease. It is also satisfactory to note that the relations of the two communities have improved considerably during the last eight months. The occurrence of riots creates an atmosphere of suspicion and distrust, and intensifies the feelings, embitters the relations and wounds the sentiments of all the communities. Hindus accuse Muslims of aggression. Muslims charge the latter with various crimes. I do not think it necessary to apportion either praise or blame between the two communities. I cannot indict a community of 68 millions on the one side or a community of 210 millions on the other. But it cannot be denied that the communal feeling and racial rivalry which have found expression in communal riots have begun to influence the administration. When the feelings of two great communities are greatly strained, when law and order cannot be maintained adequately and effectively, it is necessary, nay it is absolutely essential, that the administration should inspire confidence. If this element is lacking in any administration, if one community thinks that the life and property of its members will not be safeguarded, if it suspects the motives, distrusts the policy, and dislikes the presence of the administrator, the whole system stands condemned. The official, then, has forfeited all claims to respect; he has lost the confidence of the public, and has deprived himself of the chief instrument which preserves his power, strengthens his influence, and consolidates his prestige. Yet this is bound to happen, if there is a preponderance of any community or caste in the administration.

(9) Lack of social solidarity in India.

In other countries, racial, religious and communal rivalries, differences, and distinctions are mellowed and softened, and sometimes entirely eradicated, by constant, cheerful and happy social intercourse. Intermarriage goes far to soften political asperities, inter-dining creates a feeling of brotherhood, and a sentiment of comradeship is fostered which contributes to the growth of a common civic feeling, a feeling in which sentiment, reason, will, and feeling, combine in harmonious proportions, and create that patriotic fervour and national consciousness which transcend the boundaries of religion, race, and language. The example of Switzerland shows how such differences can be surmounted and a united nation developed out of material that seems at first sight to be thoroughly unsuitable and unmalleable. Every Government, as Burke has finely said, is not merely a Government of laws, but also a Government of men. In India, unfortunately, this is not the case. Non-Muslims do not marry into Muslim families; they will regard any food touched by the Muslims as impure; they cannot dine together; while social

customs, make it absolutely impossible for a Hindu to maintain that social level which are the pre-requisite of all democratic Governments. In religion and customs, they are poles apart. Religious differences would not have retained their vigour if social intercourse had been frequent, happy, unrestrained and cordial. Unfortunately, such conditions do not operate in India. It is true that the number of unorthodox Hindus has increased; it is also true that such Hindus mix freely and easily with the Muslim; and it must be admitted that the Hindus have made considerable social progress in the Punjab. It must be confessed, however, that the latter constitute only a microscopic minority. It is well known that they exercise little influence in social matters on the vast bulk of the Hindus.

These reasons make it imperative that all the communities in these provinces should be represented in the administration of the provinces. If this is not done, the administration will not inspire confidence; it will be dominated by an oligarchy of a particular caste or a particular community which will monopolise all the posts, manipulate the whole governmental machinery in its own interest, and produce a state of affairs which will lead to constant warfare between various elements of the population.

(10) The Question of Efficiency.

It may well be asked, why not appoint the most efficient men, irrespective of caste, communal and religious considerations? I am entirely at one with those who insist on efficiency. I believe that if inefficient men are appointed to any post, all communities, nay the whole country, will suffer. But the standards and criteria of efficiency must be clearly laid down. Unless this is done, particular castes with peculiar aptitude for a special kind of work will pack all the offices, exclude members of other castes, and will become corrupt, greedy, selfish and tyrannical. Efficiency must be interpreted in its truest and most appropriate sense. I may be permitted to give an instance. The executive service—whether provincial or imperial—needs qualities and demands virtues which are different from those required by accountants and schoolmasters. If the executive lacks continuity in policy, promptitude in action, courage to enforce its decision, judgment in the selection of officials, and the possession of special knowledge and technical skill it will fail miserably. Efficiency has consequently reference to the end in view. If a person is efficient, he must be so for a particular post. He cannot be efficient *in vacuo*. It has, however, happened on several occasions that though capable, efficient and suitable Muslims for various posts were available, though they applied, and were in every way deserving of appointment, non-Muslims were actually appointed, simply because the word "efficient" was interpreted in a way that suited non-Muslims. I need only refer to the proceedings of the local bodies, many Indian universities, and other bodies for confirmation of this statement.

Again, though I regard efficiency as a criterion, I do not regard it as the only test in appointment to various posts. I think that in a country where various communities, races and creeds occupy different educational, economic and social levels, where the fact of caste determines the position.

of a member of a caste in the social scale, it is inevitable that other considerations than those of efficiency will, and must, be taken into account. Character as well as efficiency must be taken into account. I believe that in India, there is not only a probability but also a certainty of public services being monopolized by a clerical caste, possessing plenty of book knowledge and an unusual faculty for cramming for examinations, but no modicum of commonsense, and little grit of character. If such gentlemen are imported into the executive services, they may perform their ordinary duties admirably, but they will fail miserably in emergencies. I have no objection to minimum qualifications being laid down for admission to all services. I think that it is only just and reasonable.

So far as the question of efficiency is concerned, I may say briefly that the United Provinces Muslims are as efficient as members of other communities, and can perform, and are performing, all the duties of their office as efficiently as other communities.

The facts supplied in the United Provinces Muslims' Memorandum to the Indian Statutory Commission show conclusively that Muslims are not properly represented in any Government department, except in the Police and the provincial executive services. Even in these services their proportion is being gradually reduced. In the Education Department, their proportion is very low indeed. It is, in my opinion, absolutely essential to the peace and tranquillity of our motherland that the recommendations of our committee services should be adopted, and a ratio of 30 per cent. fixed in all.

(11) How should "Efficiency" be measured?

I acknowledge that efficiency must be the chief test. But efficiency must not be interpreted in a narrow sense. It must not be confounded with book-learning. There are two factors in measuring efficiency: (1) quality of character, and (2) quality of mind. Both these play an essential part in all criteria of efficiency. Several members of the majority community on the other hand, use efficiency and voting strength as interchangeable terms. If they can appoint their own castemen by sheer voting strength, they can adduce numerous trivial and flimsy excuses for calling him efficient. This has been our sad experience in hundreds of cases all over the province. I believe that the only effective way is to lay down minimum qualifications and to reserve 33 per cent. of all vacancies in all grades of every Government department throughout the province. These vacancies should be filled up by a Provincial Public Service on the result of a competitive examination, or on the candidate satisfying such tests as the commission may impose. The examination will be the same for Hindu and Muhammadan candidates, but Muslims will be selected from among the Muslim candidates, and Hindus from among the Hindu candidates. This principle has been most successfully applied by the United Provinces Government in the Deputy Collectors' examination, where this percentage has been sanctioned for us. I recommend that this principle should be extended to every Government department.

(12) The policy of " Nationalists " discussed.

The United Provinces Muslims are represented in the Police and the Provincial Executive of the province slightly in excess of the percentage of their population. This is due to the fact that they possess executive ability of a high order. This has been acknowledged by competent British administrators on innumerable occasions. Yet because their ability, driving power, initiative, and power of command have brought them to the front in the public services of their country, they are pursued by constant attacks in the local Nationalist daily, *the Leader;* they are baited in the local Legislature by "patriotic Nationalists," and are attacked on the public platform. Why? Because, forsooth, they form only 14 per cent. of the population, and their proportion in these services is slightly greater. This agitation is so utterly illogical and inconsistent that one can only wonder at the simplicity of the belief held by these gentlemen. They are apparently attacked on the ground that their representation in these two departments is excessive. The Muslims may well reply: "All right, we now know that you do believe in the principle of representation in the administration. If so, you should apply it all round, and appoint Muslims in those departments in which they are not represented at all." This is perfectly fair. Yet, while for other departments the principle of "efficiency" is insisted upon, for the Police and the Provincial Executive Service proper representation of the majority community is demanded. The argument is worthy of the trial in *Alice in Wonderland*:—

"That's very important" the King said, turning to the jury. They were just beginning to write this down on their slates, when the White Rabbit interrupted: "*Un*important, your Majesty means, of course," he said in a very respectful tone, but frowning and making faces at him as he spoke.

"*Un*important, of course, I meant," the King hastily said, and went on to himself in an undertone, "important—unimportant—unimportant—important—" as if he were trying which word sounded best.

In fact, the proceedings of nearly all the provincial Legislatures for the last five years are disfigured by numerous questions asked by members on the representation of castes, communities and religions in nearly every department of the Government. The local bodies are also affected by it.

(13) The policy of the United Provinces Government.

The policy of the Government of India regarding the representations of Muslim in the services has already been quoted in section 15(6) of Chapter I of this Report (vide *supra* page xxvii).

I quote below the practice observed by the United Provinces Government in the matter of appointments. From this it will be clear that the right of Muslims to representation in the administration has been acknowledged not only by the Government of India, but also by the Local Government.

The following letter from Mr. T. Sloan, I.C.S., Special Reforms Officer, United Provinces Government, to the Indian Statutory Commission supplies all the available information on the subject.

It is dated December 12, 1928, and is addressed to the Secretary, Indian Statutory Commission, Lucknow.

The letter makes it perfectly clear what the practice of the Local Government has been in the past.

" When the Muslim deputation were giving evidence before the Joint Conference I was asked whether this Government had ever issued any anncuncement or resolution declaring their general policy in the matter of the representation of minority communities in the public services. I informed the Chairman at the time that no such announcement or resolution had been made. There is in the Manual of Government Orders (paragraph 345A) a paragraph drawing attention to the necessity of securing a due admixture of castes in Government service, in order to prevent a monopoly of Government employment by particular sections of the community, and to secure the admission to the services of castes hitherto either unrepresented or represented only to a small extent. That paragraph is based on an order of the Governor-General in Council, dated January 20, 1911. The object of the orders was, I think, to prevent caste cliques in Government departments rather than to secure representation of minority communities such as the Muslims.

2. While, however, no general policy has been announced, there is a well recognised practice of securing a certain proportion of representation to Muslims; in regard to certain services the practice is authorised by definite rules. In other services it would seem to be on convention rather than definite rule. I give below examples from different services: —

(1) In the United Provinces Civil (Executive) Service, one-third of the vacancies to be filled by competitive examination is definitely reserved by Government order for Muslims (paragraph 38 of the Manual of Appointments and Allowances). A proportion of the numbers of this service are appointed by promotion from the rank of tahsildar, and the generally recognised distribution of appointments so made is five Hindus to three Muslims.

(2) United Provinces Civil (Judicial) Service—Rule 4 of the rules regulating appointment to this service prescribes that in making appointments endeavour should be made to secure the due representation of the different classes and communities. No definite proportion of vacancies is, however, laid down for any community.

(3) United Provinces Police Service—Under rule 4 of the rules regulating appointment to this service the Governor in Council is empowered to announce, with a view to prevent the preponderance of any community in the service, the number of vacancies which shall be reserved for particular communities. No definite proportion is laid down. As a matter of fact the Muslims actually preponderate in this service.

(4) Recruitment to the Provincial Forest Service is at present in abeyance, but the rules prescribe that the names of candidates who head the list at the examination up to double the number

of vacancies are to be submitted to Government for final selection in order, so far as possible, to give effect to the principle of adequate representation of different communities.

(5) In the Subordinate Revenue Service it is laid down that not less than two and not more than four Muslims shall be taken for every five Hindus, the ratio being determined in each year according to the comparative merits of the candidates.

(6) In the case of sub-registrars there is no rule nor definite order prescribing the representation of minority communities, but in the last four years Muslims and non-Muslims have been appointed in the following proportion:—

1925	..	..	..	..	..	3 to 5
1926	..	..	..	..	..	2 to 3
1927	..	..	..	..	..	6 to 12
1928	..	..	..	..	..	4 to 6

(7) In the Subordinate Educational Service there is an established convention that 30 per cent. of the total number of appointments are made from the Muslim community provided that qualified candidates are available.

(8) In the Excise Department there is an order that in the recruitment of excise inspectors 30 per cent. should be Muslims.

(9) In the Co-operative Department there is a definite order that one-third of the new appointments of inspectors and assistant registrars should be given to Muslims.

(10) In the Agriculture Department the usual rule in making appointments to the Subordinate Agricultural Service is to appoint one Muslim to every two Hindus.

(11) In the Subordinate Police Service there is a regulation that Muhammadans shall not be allowed to absorb more than half the appointments.

3. These examples are sufficient to show that while Government policy has never been announced in general terms, the practice in the various departments has been to secure either by definite rule or by convention a proportion of Muslims which in most departments has been fixed at 30 per cent.

T. SLOAN."

(14) Muslims want a guarantee for the future.

The chief reason why I want safeguards in the services is that they require a guarantee not only for the present, but also for the future. Let me explain my meaning. The position of my community in the public services has been affected since the Reforms. When this happened at a time when the local Legislature possessed only limited powers, when it could make its voice felt only in the Transferred departments, we can conceive the effects that would be produced on my community when the whole

Government, and not merely one part of it, is made responsible to it. Such an event is likely to happen in the near future. My community is not in the least perturbed by it. It, on the other hand, has done, and will do, its very best for the attainment of this ideal, but it desires guarantees and safeguards before it can agree to any change. It knows that unless its position in the services is effectually secured, it will fare still worse in future than it has done during the last nine years. Our only basis for this forecast is our experience of this period. I claim that in politics the test of experience is the soundest and the safest. I, therefore, fear that unless this safeguard is guaranteed to Muslims, even the position which has been left to them since the Reforms will be seriously affected. We want a definite and solemn assurance, embodied in a parliamentary statute, that our existence as a community shall not be sacrificed on the altar of any theory that is propped up by any community.

CHAIRMAN'S NOTE

ON THE

EXPLANATORY NOTE

OF

DR. SHAFA'AT AHMAD KHAN

CHAIRMAN'S NOTE

on the

Explanatory Note of Dr. Shafa'at Ahmad Khan

My learned colleague, Dr. Shafa'at Ahmad Khan, has considered it necessary to append a rather comprehensive "Explanatory" Note. I do not propose to write a rejoinder to his Note, but as Chairman of the Committee I consider it necessary to make a few observations with regard to it to enable its being understood in its proper perspective.

2. A brief account of what took place in the Committee may not be out of place here. Dr. Shafa'at Ahmad Khan first proposed to write a separate report as he did not agree to the "manner and method" of the report as drafted by a sub-committee. He actually wrote out a document which was six times the size of the sub-committee's draft. Great exception was taken in the Committee to Dr. Khan's draft as it dealt with a number of points which had never been before the Committee, and further, as it had in it a great deal of controversial matter the authenticity of which was disputed. Ultimately, the learned doctor very generously agreed to sign the report as drafted by the sub-committee, provided a few changes in the recommendations were made and he was allowed to append an explanatory note on certain points, such as the rights of minorities, the method of enforcing the minority safeguards, communal representation, the Governor's powers—subjects which he had specially studied and which, in his opinion, had not been adequately discussed in the Report. He made it clear that, with the exception of a difference of opinion about the retention of the Indian Civil Service and the Indian Police Service, he was in complete agreement with the Committee's recommendations, and he promised that he would

not incorporate any dissentient views in the Note, which was to be only an explanatory one. On this understanding the Report was signed at the last meeting of the Committee which was held at Naini Tal on June 30, 1929. In accordance with this undertaking, Dr. Khan took off a large amount of matter from his original draft. I regret, however, to have to say that the note still does not conform to the description of an explanatory note, and, besides being full of repetitions, contains a great deal of matter which in the interests of all concerned would have been much better left out.

2. My first complaint against the Explanatory Note is that it appears to be designed to convey an impression that the Muslim community in this province is a downtrodden, forsaken minority, and has been very unfairly treated by the Government and the people alike during the last nine years. I cannot help remarking that the picture has been very much overdrawn by my learned friend, if indeed grounds exist for that reading of the recent past at all, and it does not do justice either to the majority community or to the Government which so far had ample powers to protect unfair treatment of one community by another. The Committee decided in the very beginning of its labours not to indulge in the discussion of controversial or acrimonious matters, and it was for this reason that the statements contained in the Memorandum submitted in the name of the United Provinces Muslims were not subjected to a scrutiny. It has been shown that a great many of the allegations contained in that Memorandum are wrong and misleading. Some of them were the subject of interpellations in the local Legislative Council, and the replies given by Government make it clear that the facts are not as stated in the Memorandum. Moreover, certain charges made by the authors of the Memorandum had to be publicly withdrawn by them. Having myself been largely responsible for the spirit of sweet reasonableness which attended the career of my Committee, I do not propose referring to these unpleasant matters in this Note. My other Muslim colleague, Khan Bahadur Hafiz Hidayat Husain, who yields to none in his championship of the cause of his community,

was all along entirely with the rest of the Committee; and it is significant that he did not consider himself called upon to append either an Explanatory or a Dissenting Note, or to associate himself with the Note of Dr. Khan. His signature is unreserved and unqualified. Dr. Khan himself admits on page xxiv that "it is only by mutual give-and-take that we can solve the communal problem in India". He adds, "It must be confessed, however, that such a trust is lacking at the present time". But while he indulges in such and other statements of a general character, he has done little in his Note to contribute to the begetting of that trust. Almost the whole of page xxv is written in a style that is not in conformity with the extreme good-will that prevailed in the Committee. The following sentence is typical :—

"The structure the new constitution may establish may be excellent, and it may contain the latest devices and the quickest remedies for the Newtonian equipoise of the different authorities it may constitute, but if it solves the communal problem by deliberately ignoring it, it will be like the deep sea-fish, which, when brought to the surface, first swells and then bursts,"

Another sentence, appearing in the middle of page cxv illustrates the spirit. While dealing with the representation of Muslims in the services, he says :—

"Unless a fixed, frank and uncompromising ratio is mutually settled . . . and its principle accepted and legalised in parliamentary statute . . . the greatest of all human tyrannies will reign supreme in India : the tyranny of caste or creed over free and democratic Islam."

On page cxxii he indulges in the following generalisation without any evidence to support it :—

"It has, however, happened frequently that though capable, efficient and suitable Muslims for various posts were available, though they accepted and were in every way deserving of appointment, non-Muslims were actually appointed, simply because the word 'efficient' was interpreted in a way that suited non-Muslims."

This is a very unfortunate statement and very seriously open to question. All superior appointments are so far subject to the sanction of the Governor, and the charge, if correct, would therefore be against him.

The reference on page cxxiv to the nationalist daily, the *Leader*, is as uncalled for and inappropriate as the halting apology for the excessive proportion of the Muslims in the Executive and Police Services.

It is no use burdening this Note with quotations. Practically the whole of Chapter IV contains matter that did not become a member of a community whose demands for comprehensive safeguards had been accorded such favourable treatment by the Committee.

4. The second observation that I have to make is that Dr. Khan's is not an Explanatory Note which deals with "certain important points" that have not been "fully discussed" by the Committee and which found no place in its Report. It is much more. As I have already mentioned, the stipulation that he made when signing the Report was that he would only dissent about the retention of the Indian Civil Service and the Indian Police Service, and a note to this effect was made in the body of the Report at the end of paragraph 75. The "Explanatory Note" does, however, contain a number of new or dissenting recommendations. I do not deny that as a member Dr. Khan had a perfect right to express any view that he liked; but that would have been in a *dissenting* note. The understanding that preceded the arrival at unanimity by the other members of the Committee did not contemplate that. In the circumstances, therefore, any suggestions contained in the Explanatory Note that conflict with the recommendations of the Committee as embodied in its Report—excepting the one about the retention of the Indian Civil Service and the Indian Police Service—should be considered null and void. I will not do Dr. Khan an injustice by picking out the various new suggestions that he has incorporated in his Explanatory Note: they had best be read in original. I would only refer here to the suggestion that he has made on page xxxiv regarding the fixation of the ratio of Muslims in every *grade* of service. I am compelled to mention here that it was with the greatest difficulty that the Committee could be persuaded to accept, though in general terms, the safeguards about weighted representation of the Muslims in

the services. That the Committee permitted itself to go to very extreme lengths of concession will be clear when it is remembered that in Bengal and Sindh, according to the quotations of Dr. Khan himself as appearing on page cxvii of his note, the representation of Muslims in services has been reserved at a lower figure than what their population in those provinces justifies. Dr. Khan, while devoting considerable space to the question of weighted representation of the Muslims in the services, goes a step further and says on page xxxiv that the ratio of the Muslims should be fixed not only in every service but in *every grade* of every service. This is in complete violation of the compromise arrived at by the Committee and incorporated in its Report. Moreover, the practical difficulties of maintaining a ratio in every grade of a service are insuperable. It may be possible to maintain separate lists for Muslims and non-Muslims at the time of recruitment; but it is impossible to maintain separate lists for the two in the various grades of a service. That will work against the claims of seniority at every step, and will be a poisonous principle to adopt.

5. Dr. Khan, I am compelled to say, has not done well to drag in the Nehru Report when the Committee deliberately omitted to comment on it. That document was not discussed by the Committee at all, and any reference to it would appear to be entirely out of place and improper. It seems hardly befitting a responsible Committee like ours to indulge in cheap gibes about a document which has behind it the support of a large and influential section of vocal India, howsoever we may not agree with its recommendations and proposals.

6. These are the few observations that I have considered it indispensable to make with regard to the Explanatory Note of Dr. Shafa'at Ahmad Khan. I deliberately refrain from entering into a criticism of it. I only regret that I have had to say even so much.

J. P. SRIVASTAVA,

CHAIRMAN,

U. P. Provincial Reforms Committee.

KAILAS KUTIR, CAWNPORE:
August 29, 1929.